PERSIAN DOCUMENTS

Social history of Iran and Turan in the fifteenth to nineteenth centuries

Edited by KONDO Nobuaki

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PERSIAN DOCUMENTS

After the Mongol period, Persian was the official written language in Iran, Central Asia and India. A vast amount of documents relating to administration and social life were produced and yet, unlike Ottoman and Arabic documents, Persian historical resources have received very little critical attention.

This book is the first to use Persian documents as the sources of social history in Early Modern Iran and Central Asia. The contributors examine four distinct elements of the documents:

- the formal aspects of the sources are initially inspected
- the second part focuses on newly discovered sources
- the most abundant documents of the period – waqf deeds – are individually studied

In this way the reader is led to realize the importance of Persian documents in gaining an understanding of past urban and rural societies in the Middle East.

Up until now our understanding of historical Islamic and Middle Eastern societies has been based mainly on Arab and Ottoman documents. In contrast, this book foregrounds other historical "Islamic" societies that employed different systems and practices. By using a wide range of sources, including sale deeds, waqf endowment deeds, tax registers and sufi documents, the contributors highlight the rewards of researching hitherto neglected material.

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NEW HORIZONS IN ISLAMIC STUDIES
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CONTENTS

List of figures vii
List of maps ix
List of tables xi
Notes on contributors xiii
Preface xv

PART I
Formal aspects **1**

1 A commentary on the the closing formula found in the Central Asian waqf documents 3
ISOGAI Ken'ichi

2 Formal aspects of Qajar deeds of sale 13
Christoph WERNER

PART II
New sources **51**

3 About a scroll of documents justifying Yasavi rituals 53
Bakhtiyar BABAJANOV

4 *Majmūʿah'hā*: Important and unknown sources of historiography of Iran during the last Safavids – the case of *Majmūʿah-i Mīrzā Muʿīnā* 73
Mansur SEFATGOL

PART III
Waqfs **85**

5 The waqf of a Timurid amir – the example of Chaqmaq Shami in Yazd 87
IWATAKE Akio

6 The waqf of Ustad ʿAbbas – rewrites of the deeds in Qajar Tehran 106
KONDO Nobuaki

PART IV
From cities to villages **129**

7 Irrigation examined through documents of Qajar Iran 131
Hashem RAJABZADEH

8 Urban–rural relations in early eighteenth-century Iran – a case study of settlement patterns in the province of Hamadan 147
YAMAGUCHI Akihiko

Index 186

FIGURES

2.1	Sale of the Bagh-i Mirza Zahid – *mubāyaʿah* dated 1186/1772	16
2.2	Abstract layout sketch of a private deed	18
2.3	Sale deed from 1279/1863	19
2.4	Endorsement from a deed of sale dated 1255/1840	34
2.5	Remark on the number of issued copies	37
2.6	Outward appearance of an early Safavid and a late Qajar deed of sale	39
3.1	Documents 1–3	55
3.2	Documents 4 and 5	58
3.3	Document 10	62
3.4	Document 11	64
4.1	*Majmūʿah-i Mīrzā Muʿīnā*	77
6.1	Composition of endowed properties in Document 1	111
6.2	Composition of endowed properties in Document 2	111
6.3	Shares in the *ḥammām* of ʿAbbas-abad	115
7.1	Document 1	138
7.2	Document 2	140
7.3	Document 3	142
7.4	Document 4	144
8.1	TT907, 112–113	152
8.2	Village size distribution in Hamadan province	158
8.3	Village landholding size distribution in terms of *çift* numbers	161
8.4	Distribution of taxpayers per *çift*	162

MAPS

6.1	ʿAbbas-abad quarter in the map of 1309/1891	109
6.2	The city of Tehran and Takyah of ʿAbbas-abad in 1275/1857	110
7.1	River system of Iran	132
7.2	*Nahr-i Mustajdah-i Ghāzānī*	133
7.3	*Nahr-i Mustajdah-i Rashīdī*	134
8.1	Rural and urban settlements in Hamadan province	172
8.2	Large villages, towns and assumed main trade routes	173

TABLES

2.1	Text edition, first part, of the model deed of sale from 1186/1772	21
2.2	Text edition, second part, of the model deed of sale from 1186/1772	23
2.3	Text edition, third part, of the model deed of sale from 1186/1772	30
2.4	Text edition, fourth part, of the model deed of sale from 1186/1772	33
4.1	Contents of the *Majmūʿah-i Findiriski*	75
4.2	Contents of *Jung-i Aḥmad-i Ghulām*	76
4.3	Contents of *Majmūʿah-i Mīrzā Muʿīnā*	78
4.4	Comparative table of contents of the three word *majmūʿah*s	81
5.1	Chronology of Chaqmaq's activities	88
5.2	Buildings constructed by Chaqmaq and Bibi Fatimah	91
5.3	Duties and salaries of the officers	96
6.1	List of the waqf properties found in various sources	112
8.1	Inhabited and uninhabited villages in Hamadan province	150
8.2	Villages having specific crops or apiculture as tax items in Hamadan province	156
8.3	Villages with gardens and vineyards in Hamadan province	156
8.4	Sheep tax per *nâhiye* in Hamadan province	157
8.5	Classification on population size of rural settlements in Hamadan province	159
8.6	*Resm-i çift* and taxes on primary grains (*akçe*)	159
8.7	Taxpayers and *çifts* per *nâhiye* in Hamadan province	163
8.8	Taxpayers in towns of Hamadan province	164
8.9	Manufacturers in towns of Hamadan province (*akçe*)	167
8.10	Commercial activities in towns of Hamadan province	168
8.11	Agricultural production in towns of Hamadan province	168

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PREFACE

This book is the first collection in the Western academic world of articles on Persian historical documents. Persian documents are essential sources for the historical study of Iran and Central Asia (Turan); in those regions, most administrative and legal documents were written in Persian after the Mongol period. Compared to Ottoman documents, however, Persian documents have not been fully studied by researchers. The reason is obvious. The study of these particular historical documents has been hindered by huge obstacles, in particular lack of access. For years, native researchers were permitted to access archives. Foreign researchers were obliged to use published documents, which were limited in number and in theme. For this reason, historical study of the region stagnated somewhat until recently. Now that the archives are more accessible than before, investigation of the documents is bringing many new discoveries in historical studies, especially in the field of social history.

The documents dealt with in this volume are all related to the social history of the region, but vary greatly in form and content, being waqf deeds, sale deeds, documents on Sufi rituals, and more. They were produced within a vast geographical area. At first glance, the reader may wonder how we can define the term "Persian documents." But if the reader looks closely, many common elements appear. The variety and unity of the documents open the way to a comparative study, which is an important point of this volume. For example, one can compare the form of waqf deeds from Central Asia with that of Iranian waqf deeds. Of course, it is also possible to compare them with Ottoman counterparts, which were studied long before us. Sometimes we tend to consider Ottoman examples "Islamic," but the "Islamic" examples in this volume differ from Ottoman ones. In the Eastern part of the Islamic world, a different tradition did exist, and to clarify that tradition will certainly be useful for understanding the whole of Islamic history.

This volume was first intended to be the proceedings of the workshop on Persian archival sources, sponsored on December 4, 1999 at the Institute of Oriental Culture, University of Tokyo, by the Islamic Area Studies Project. This project, headed by Sato Tsugitaka, was set up in 1997 with a five-year Grant-in-Aid for Scientific Research from the Japanese Ministry of Education, Science

and Culture, to develop new methods for understanding the Islamic World. Unit 6 of the project was named "Source Materials for the Study of Islamic Civilization," and I was part of it from 1998 to 2002. The study group for Persian documents was organized within the project, and research meetings and seminars on this topic were held.

All the contributors to this volume joined the workshop and had discussions on this theme. Some contributors are represented here by different chapters from the ones they contributed to the workshop, but the results of the workshop discussions are fully reflected in this volume.

The first two chapters deal with the formal aspects of the documents. Isogai Ken'ichi is a specialist in Persian documents from Central Asia, interested in the relationship between Islamic law and the form of documents. He points out that the discussions on Islamic jurisprudence are fully reflected in the closing formula of Central Asian waqf deeds. The records of nominal lawsuits against the founders of waqfs, inserted into the closing formulas or the endorsements (*sijill*) of the deeds, are indispensable to protect the waqfs from usurpation. It is noteworthy that such nominal lawsuits are found in Ottoman cases,[1] and Isogai clarifies the theoretical background of these cases.

Christoph Werner's chapter is concerned with formal characteristics of sale deeds from Qajar Iran. It offers not only practical support to researchers but also a comparative study of the deeds; we will understand the long-term development of the form of Iranian deeds and their deviation from Central Asian deeds even though both were written in Persian. Moreover, behind these formal developments, one can assume socio-historical elements. For example, the fact that the position of the endorsement was moved from the bottom to the top of the document after the reign of Shah ʿAbbas corresponds to other social and religious developments.

Next, contributions from Bakhtiyar Babajanov and Mansur Sefatgol are concerned with new types of sources. Babajanov introduces a scroll of documents that justify Sufi rituals. It includes quotations from works on legal jurisprudence and Sufism, Sufi chains of spiritual successions, and legal opinions (fatwa). It shows that as Sufi rituals developed, jurists attempted to justify them, with surprising consistency over a long period.

Mansur Sefatgol's chapter introduces *majmūʿah*s, which include many documents as well as literary works. They are not only important sources for the study of later Safavid history but also good examples of how the documents survived for about 300 years. Since most Safavid original documents no longer exist, clearly the researchers have to work on these *majmūʿah*s in order to revise later Safavid history.

Although a considerable numbers of waqf deeds survive, study of them has not progressed far. Iwatake Akio's chapter analyzes the waqf deed of a Timurid amir, who was an emigrant from Mamluk Syria. Through the waqf endowments, the amir and his wife tried to keep their property for their descendants. They sought profit at the same level as urban notables and became assimilated into

urban society. The chapter shows one aspect of Iranian society under the Timurids.

Kondo Nobuaki's chapter is related to rewrites of waqf deeds. The particular case examined is quite remarkable because the deed was rewritten twice after the founder's death. By investigating the process of rewrites, Kondo has attempted to clarify some aspects of social relations and judicial customs under the Qajars, which are very different from their Ottoman counterparts.

Part IV concerns urban and rural studies. Although the documents are indispensable sources for these studies, they have not been fully utilized by historians. Rajabzadeh introduces some unpublished documents on irrigation under the Qajars. His effort to collect and publish documents is very worthy, and the documents tell us much about the traditional irrigation system in Iran.

Yamaguchi Akihiko discusses urban–rural relations in eighteenth-century Hamadan. His article is based on the Ottoman *tahrîr defterleri*, not on Persian documents. However, the Ottoman document to which he refers provides not only the precise data of the region but also some idea about similar, missing, registers that must have been compiled under the Safavids.

I wish to express my profound gratitude to the authorities of the IAS project for accepting our request for the workshop and publication, to all the participants of the workshop, and to the staff of the project.

Finally, I express deep grief at the untimely death of Professor Iwatake Akio. He was one of the pioneers of Persian document studies in Japan, and always led our study group on Persian documents.

Kondo Nobuaki
October 2002

Note

1 Toru Miura, "Personal Networks Surrounding the Ṣāliḥiyya Court in 19th Century Damascus," in *Études sur les villes du Proche-Orient XVIe-XIXe Siècle: Hommage à André Raymond*, ed. Brigitte Marino (Damascus: Institut français d'études arabes de Damas, 2001), 134–137.

Part I

FORMAL ASPECTS

1

A COMMENTARY ON THE CLOSING FORMULA FOUND IN THE CENTRAL ASIAN WAQF DOCUMENTS

ISOGAI Ken'ichi

The waqf documents preserved in almost all the parts of the Muslim world contain rich information on the past social life of Muslim communities. These documents have attracted a wide range of specialists engaged in historical research into every aspect of the Islamic world, including the history of Muslim Central Asia. Aware of the documents' importance as historical sources, several specialists in this area devoted themselves to studying waqf deeds drawn up at various times in the region. Rich and specific information drawn from the contents of these documents appears to have been well analyzed by scholars, mainly from socio-historical or socio-economic historical viewpoints.[1] However, researchers have paid much less attention to both the external appearance and internal structure of the documents[2] even though the form of a document sometimes gives information as valuable as that provided by the contents.

This chapter examines issues related to the closing formula often found in the waqf deeds of Central Asia after the sixteenth century. It aims to show how the teachings of the Hanafite school exerted influence on the form of the court document as composed in a region where this school enjoyed a dominant position for a long time.

The closing formula

The waqf deeds drawn up in Central Asia after the sixteenth century often include the same formula in their endings. Here, I will show the text of this formula in generic form, reconstructed on the basis of five documents whose dates range from the end of the sixteenth to the middle of the eighteenth century.[3]

Persian text

(1) وبعده واقف مذکور این موقوفات را از دست خود اخراج کردند و از سائر املاک خود افراز نمودند و بکسی که بتولیت آن تعیین نموده بودند تسلیم نمودند خالیاً عن موانع التّسلیم (2) و باز آنرا بعلّت عدم لزوم میخواستند متصرّف شوند (3) که حضرت قاضی الّذی سیوشّح ذیل هذه الوقفیّة تحت ختمه اسمه الشّریف و نسبه العالی در وقتی که عالم بودند بمحلّ خلاف علماء دین و مواضع اختلاف مجتهدین رضوان الله علیهم اجمعین (4) بر خصم حاضر جاحد حکم کردند اوّلاً بصحّت این وقف و ثانیاً بلزوم آن فصار هذا وقفاً صحیحاً لازماً شرعیّاً مسجّلاً

English translation

(1) After [the *wāqif*'s statement that he had turned the legal status of the objects explained above from privately owned property into waqf,] the *wāqif* removed these properties from his possession (*dast*),[4] set them apart from his other private properties, and delivered them to the one whom he had appointed to administer the waqf, having been free from anything that might prevent the delivery. (2) Then the *wāqif* wanted to put these properties changed into waqf at his own disposal again, under the pretext that [the waqf] lacked binding force *or* irrevocability (*luzūm*). (3) At this point, His Excellency the qadi whose noble name and sublime surname would adorn the bottom of this document under his seal, having known about the points where the disagreement and divergence among religious scholars and mujtahids – may God be satisfied with them all – had occurred, (4) passed judgment against the defendant who was present and denied [the claim of the plaintiff], first, that the contract of the given waqf had been made legitimately and, second, that the given waqf had acquired binding force. Then [the waqf mentioned in this document] became the legitimate (*ṣaḥīḥ*), binding (*lāzim*) and lawful (*sharʿī*) waqf provided with the *sijill* (*musajjal*).

The text can be divided into four parts, as demonstrated above: (1) the *wāqif*'s declaration of delivery (*taslīm*), (2) the *wāqif*'s intention of revoking waqf (*rujūʿ*), (3) the description of the qadi who passed the judgment and (4) qadi's judgment (*ḥukm*) confirming the legitimacy (*ṣiḥḥa*) and binding force (*luzūm*) of the waqf.

The *wāqif* who intended to establish waqf according to the teachings of the Hanafite school had to acquire through a formal, or fictitious, lawsuit the qadi's judgment affirming the binding force of the waqf to warrant its permanent continuation.[5] The origin of this complicated and somewhat curious procedure can be attributed to controversy among three founders of the Hanafite school over the binding force of the waqf, as is alluded to in the following passage: "… having known about the points where the disagreement and divergence

among religious scholars and mujtahids – May God be satisfied with them all – had occurred ...."

As will be discussed later in detail, Abu Hanifa, contrary to his two disciples Abu Yusuf and Muhammad al-Shaybani, had denied the binding force of waqf; therefore, jurists assumed that the issue must have been resolved by individual qadis. In other words, the decision whether the binding force of waqf was to be admitted or not was put into the hands of individual qadis. Thus, as far as the Hanafite school is concerned, the binding force (*luzūm*) of each waqf can be confirmed only by the judgment (*ḥukm*) of individual qadis, and these circumstances find their clearest expression in the closing formula in question.

On the other hand, Central Asian waqf deeds drawn up *before* the sixteenth century were usually accompanied by a separate *sijill*, that is, a document recording the judgment of a qadi.[6] The word "*musajjal*," found in the closing formula and meaning "being provided with a *sijill*," suggests that the binding force of waqf was originally considered to be documented by a separate *sijill*.

The following section will describe these separate *sijill*s attached to waqf deeds before the sixteenth century and show the process of transition from a separate *sijill* to the formula incorporated into the text of a waqf deed.

From the separate *sijill* to the closing formula

According to Hanafite jurists, the judgment confirming the binding force of waqf had to be acquired through a formal lawsuit. Ibn al-Humam (*d*.1457), the author of *Fatḥ al-Qadīr*, explains its process.[7]

> The judgment of a *ḥākim*[8] is acquired in the following manner: [a *wāqif*] delivers the property which he made waqf to a mutawalli and, after that, manifests his intention of revoking waqf. Then [the mutawalli] brings a lawsuit against [the *wāqif*]. Finally, the qadi to whom the lawsuit was brought pronounces the judgment in favor of the binding force of the waqf in question.
>
> *wa-ṣūratu ḥukmi al-ḥākimi ... an yusallima-hu ilā mutawallin thumma yuẓhira al-rujūʿa fa-yukhāṣima-hu ilā al-qāḍīʾ fa-yaqḍiya al-qāḍī bi-luzūmi-hi*

The process consists of four elements: delivery (*taslīm*), revocation (*rujūʿ*), lawsuit (*mukhāṣama* or *murāfaʿa*), and judgment (*qaḍāʾ* or *ḥukm*). One would find these elements far more strictly reproduced in the separate *sijill*s than in the closing formula incorporated into the text of waqf deeds. Here, I quote the part of the *sijill* – dated 9 February 1299 – attached to the waqf deed bearing the date 13 January 1299 as an example:[9]

I, Abu al-Fadl Muhammad b. Muhammad b. ʿUmar b. al-Mahmud al-Bukhari … pronounced a judgment in favor of the legitimacy and legality of this waqf and also in favor of the validity and binding force of this *ṣadaqa* concerning all the properties which were described to be waqf in the main text of the waqf deed …. The judgment was delivered as a consequence of a legitimate and lawful suit … which had taken place in my presence and which had been brought by the plaintiff whose claim had been permitted in law to be heard against the defendant, who as an answer to the plaintiff had denied the legitimacy and binding force of the waqf in question – in this case it is permitted in law to pronounce judgment against him because the defendant's claim tends to the invalidity [of the waqf]. I came to the decision stated above when, with sufficient knowledge about the points of controversy, I exerted the *ijtihād*, which led to the conclusion affirming the legitimacy and binding force of the waqf in accordance with the pious imams of the past – may God have mercy upon them – who had upheld the legality of a waqf like this and the binding force and validity of a *ṣadaqa* in this form.

… ḥakamtu bi-ṣiḥḥati hādhā al-waqfi wa-jawāzi-hi wa-nafādhi hādhihi al-ṣadaqati wa-luzūmi-hā fī jamīʿi mā buyyina waqfīyatu-hu fī bāṭini ṣakki al-waqfi hādhā … wa-dhālika baʿda daʿwā ṣaḥīḥatin sharʿīyatin … jarat bayna yadayya min khaṣmin muddaʿin jāza fī al-sharʿi samāʿu daʿwā-hu ʿalā khaṣmin munkirin ṣiḥḥata-hu wa-luzūma-hu wa-sāgha fī al-sharʿi ijrāʾu al-ḥukmi ʿalay-hi māʾiluu ilā jihati al-fasādi wa-dhālika baʿda mā ʿaraftu mawāḍiʿa al-khilāfi wa-mawāqiʿa al-ikhtilāfi waqaʿa ijtihādī ʿalā ṣiḥḥati-hi wa-luzūmi-hi ʿamalan minnī ʿalā qawli man yarā jawāza hādhā al-waqfi wa-luzūma hādhihi al-ṣadaqati wa-nafādhi-hā min al-a'immati al-salafi al-ṣāliḥati raḥima-hum allāhu

The *sijill* cited above gives the full details of the process of this formal lawsuit. That a mutawalli appears as a plaintiff, while a *wāqif* is allocated the role of a defendant, and that the judgment is delivered as a result of the qadi's own *ijtihād* are not clearly shown in the closing formula after the sixteenth century. On the whole, besides the detailed description of the lawsuit, these separate *sijill*s have the essential feature which provides a striking contrast to the closing formula incorporated into the text of a waqf deed, that is, they are written in the first person in the name of the qadi who passed the judgment in favor of the binding force of the waqf in question.[10] This feature – being written in the first person in the name of a qadi – appears to have been well preserved in the second half of the fifteenth century when the description of the lawsuit became drastically simplified.[11]

The fact that some Central Asian waqf deeds drawn up before the sixteenth century have a separate *sijill* in the first person, even though they also contain the description of the lawsuit in the third person at the end of their own text,[12]

clearly shows the significance of these separate *sijill*s. At least, at that time including only the description of the lawsuit in the text of a waqf deed apparently could not give waqf the effect expressed by the term "*musajjal*" (lit., being provided with *sijill*).

In contrast to these precedent separate *sijill*s, the later closing formula was neither written in the first person nor took the form of a separate document. The new features of the closing formula after the sixteenth century can be summarized as follows:

1 The text was written in the third person and entirely incorporated into the main text of a waqf deed.
2 The description of the formal lawsuit came to include *taslīm* besides *rujūʿ*, *murāfaʿa* and *ḥukm*, while its text became quite simplified.
3 The effect formerly expected in a separate *sijill* came to be given by merely putting qadi's seal to a document.[13]

This process of transition (from a separate *sijill* to an incorporated formula), which most likely took place sometime in the sixteenth century, appears to have run parallel with the contemporary teachings of the Hanafite school. For example, the late fifteenth century Central Asian fatwa compilation, *Fatāwā Shībānī* (or *Shaybānī*), contains the case cited below in an abridged form.[14]

> *Question*: Provided that Zayd converted his own garden and houses into waqf and stated that he had made them waqf, delivered them to a *mutawallī* and a qadi had passed judgment in favor of the legality of this waqf. Then, after his death, his heirs assert that Zayd did not receive a *sijill* (*musajjal nī shuda ast*) and they intend to sell all that he made waqf. In this case, if Zayd wrote down his statement mentioned above literally in his waqf deed, though he had not acquired a *sijill*, do his heirs have right to sell that which he made waqf? *Answer*: No.

This passage explicitly reflects the fact that, at least in late fifteenth-century Central Asia, the separate *sijill* written in the name of a qadi was no longer necessary for the waqf to acquire binding force. The following statement of al-Kuhistani (*d.*1554), the mid-sixteenth century Central Asian jurist, in his *Jāmiʿ al-Rumūz* justifies this change theoretically.[15]

> The fulfillment of the lawsuit is not required, because if a scribe just writes down the *wāqif*'s statement that one of the qadis of the Muslims pronounced the judgment in favor of the binding force of the waqf in question, it will be binding [automatically]. This method is not regarded as deceit that nullifies the truth and legitimatizes an illegitimate case, because it protects waqf from nullification. Thus, there is no objection to it. This method can be applied not only to waqf [but also other similar cases],

because in each case where the judgment of a *ḥākim* on the point of *ijtihād* is to be required, such as the lease contract of joint ownership and so on, it is permitted to adopt the measures mentioned above (cited from *Jawāhir*).[16]

wa-lā yushtaraṭu al-murāfaʿatu fa-inna-hu law kataba kātibun min iqrāri al-wāqifi anna qāḍiyan min quḍāti al-muslimīna qaḍā bi-luzūmi-hi ṣāra lāziman wa-hādhā laysa bi-kidhbin mubṭilin li-ḥaqqin wa-muṣaḥḥiḥin li-ghayri ṣaḥīḥin fa-inna-hu manʿu al-mubṭili ʿan al-ibṭāli fa-lā baʾsa bi-hi wa-hādhā idhā lam yakhtaṣṣ bi-al-waqfi fa-inna kulla mawḍiʿin yuḥtāju fī-hi ilā ḥukmi ḥākimin bi-mujtahadin fī-hi ka-ijārati al-mushāʿi wa-ghayri-hi jāza fī-hi mithlu hādhihi al-kitābati ka-mā fī al-Jawāhiri

We can safely assume that the sixteenth-century transition from a separate *sijill* to an incorporated formula was caused by the opinion which justified a *wāqif* in omitting the fulfillment of the lawsuit, though the opinion itself had already appeared as early as the thirteenth century.[17] Now, a *wāqif* is only required to write down in his waqf deed that a qadi pronounced the judgment. The *wāqif* no longer has to acquire a separate *sijill*, since it is the closing formula and qadi's seal that makes his waqf *musajjal.*[18]

The theoretical background of the closing formula

Finally, we will deal with the theoretical background that introduced the formal lawsuit into the process of establishing waqf. For this purpose I will have recourse to one of the most famous Hanafite juristic works, *Hidāya*, composed by ʿAli al-Marghinani (*d*.1197), which enjoyed an authoritative position among Central Asian jurists for a long time. Of course, this work also cannot be completely free from the author's own viewpoint. However, it is worth mentioning that the work was traditionally considered the most authentic textbook on jurisprudence in Central Asian madrasas.[19] Thus, we may assume that the teachings described in *Hidāya* were accepted as the normative view of the Hanafite school by the Central Asian qadis, who once must have studied at a madrasa and who were supposed to pass the judgment confirming the binding force of waqf.[20]

The *Kitāb al-waqf* of *Hidāya* begins with the question of whether ownership by a *wāqif* of the property turned into waqf is extinguished or still remains in it. From the standpoint of Abu Hanifa, who held the continuity of *wāqif*'s ownership, waqf is to be defined as the retention of a thing under the ownership of a *wāqif*, while donating the proceeds gained from it to beneficiaries (*ḥabsu al-ʿayni ʿalā mulki al-wāqifi wa-al-taṣadduqu bi-al-manfaʿati*).[21] Abu Hanifa is therefore said to have denied the binding force of waqf, because if the ownership of a *wāqif* still remains in the property changed into waqf, he has full disposal of it and if so may even sell it to another, revoking waqf itself.[22] In this

sense, later Hanafites considered that according to Abu Hanifa waqf was allocated a position similar to a loan without interest (*ʿārīya*), in essence revocable.[23]

On the other hand, the definition of waqf based on the teachings of Abu Yusuf and Muhammad al-Shaybani is the retention of a thing to the same degree as given by God's ownership (*ḥabsu al-ʿayni ʿalā ḥukmi mulki allāhi taʿālā*).[24] Thus, ownership over the property turned into waqf leaves a *wāqif*, but nobody else,[25] and consequently waqf becomes binding, while its proceeds fall into the hands of beneficiaries.[26]

From the discussion described in *Hidāya*, one understands that the origin of controversy over the binding force (*luzūm*) of waqf is to be attributed to disagreement about the ownership of a *wāqif*. The question whether the ownership of a *wāqif* leaves him or not is represented by the term "*khurūj*" (lit., to leave). According to Ibn al-Humam, the fifteenth-century commentator on *Hidāya*, Muslim jurists generally considered these two elements – *luzūm* and *khurūj* – to be inseparably related.[27] In their argumentation *khurūj* is regarded as a prerequisite for *luzūm*. Thus, waqf cannot acquire binding force (*lazima*) until the ownership of a *wāqif* leaves him (*kharaja*).

In short, Hanafite jurists were faced with great difficulties. Since Abu Hanifa had explicitly denied the *khurūj*, they needed to find clear evidence from the Qurʾan or Sunna that would give grounds for legitimatizing the *khurūj*, in order to realize *luzūm*. However, according to Ibn al-Humam, no such evidence that led to *khurūj* was in either the Qurʾan or in authentic Hadith literatures.[28]

Hanafite jurists managed to solve this theoretical difficulty by regarding the issue on *khurūj* as the one open to *ijtihād* and handing the decision on it over to individual qadis,[29] who were expected to pronounce judgment in favor of both *khurūj* and, consequently, *luzūm* by carrying out *ijtihād* themselves. This is why a Central Asian *wāqif* had to acquire qadi's judgment confirming the binding force of waqf through his "*ijtihād*."

The process of the formal lawsuit also reflects the situation described above. In its process, the lawsuit is brought by a mutawalli against the *wāqif* who manifested the intention of revoking waqf under the pretext that waqf was not binding (*baʿillat-i ʿadam-i luzūm*). One can easily find out that the argument adopted by the *wāqif*'s side is nothing but the opinion of Abu Hanifa.[30] On the other hand, what is demanded by the mutawalli's side is the legitimacy (*ṣiḥḥa*) and binding force (*luzūm*) of waqf. The crucial point, for the moment, is that the claim of a mutawalli is apparently drawn from the teachings of Abu Yusuf and Muhammad al-Shaybani, who held the binding force of waqf. Thus, the judgment was given through the lawsuit brought by the mutawalli whose claim was based on the opinion of Abu Yusuf and Muhammad al-Shaybani against the *wāqif* who intended to revoke his waqf in accordance with the teachings of Abu Hanifa.

The next issue is why the legitimacy (*ṣiḥḥa*) of waqf is demanded by a mutawalli as well as its binding force (*luzūm*). The reason is again connected with a disagreement, in this case between Abu Yusuf and Muhammad al-

Shaybani over the condition for *khurūj*. While Abu Yusuf considered that the *wāqif*'s statement of his establishing waqf (*qawl*) was the necessary and sufficient condition for *khurūj*, according to Muhammad al-Shaybani the delivery of the property turned into waqf to the hands of a mutawalli (*taslīm*) was needed in addition to the *wāqif*'s statement.[31] Confronted by this divergence, Hanafite jurists resolved it by admitting that if waqf was established in a legitimate way (*ṣaḥḥa*), *khurūj* would take place automatically beyond the disagreement between them.[32] In other words, as far as the teachings of Abu Yusuf and Muhammad al-Shaybani are concerned, the legitimacy of waqf (*ṣiḥḥa*) is considered a prerequisite for *khurūj*. Thus, in the process of the lawsuit, the mutawalli whose claim represents their opinion demands *ṣiḥḥa* as well as *luzūm* in order to realize *khurūj*, which, in its turn, entails *luzūm*.[33]

The process of the formal lawsuit through which a *wāqif* acquired the binding force of waqf is as follows:

1 A *wāqif* delivers property changed into waqf to a mutawalli (*taslīm*), which indicates explicitly the completion of waqf.
2 The *wāqif* manifests his intention of revoking waqf (*rujūʿ*) by adopting the teachings of Abu Hanifa.
3 The mutawalli brings a lawsuit (*murāfaʿa*) against the *wāqif* on the basis of the opinion of Abu Yusuf and Muhammad al-Shaybani, to prevent the *wāqif* from revoking waqf.
4 A qadi gives priority to the teachings of Abu Yusuf and Muhammad al-Shaybani through the *ijtihād* executed by himself.[34]
5 The qadi pronounces the judgment confirming, first, the legitimacy of waqf (*ṣiḥḥa*), which entails *khurūj* and, second, its binding force *or* irrevocability (*luzūm*), which depends on *khurūj*.

As is shown in this chapter, Hanafite teachings could actually exert influence on the structure of Central Asian waqf deeds. Moreover, while the lawsuit described in either the separate *sijill*s or the closing formula was only a formal and fictitious one, the description itself had great importance, for, as far as Hanafite school is concerned, the binding force of waqf could be proved only by it.

Notes

1 For works dedicated to the studies of Central Asian waqf deeds see Roziya. G. Mukminova, "Recent Uzbek Historical Studies on Thirteenth–Nineteenth Century Uzbekistan," *Asian Research Trends: A Humanities and Social Science Review* 6 (1996): 107–126, and the comprehensive bibliography in Robert D. McChesney, *Waqf in Central Asia: Four Hundred Years in the History of a Muslim Shrine, 1480–1889* (Princeton: Princeton University Press, 1991).
2 B.A. Kazakov, "Analyse structurelle des actes de *waqf* provenant d'Asie centrale, XIIIe–déb. Xxe s. (dans la perspective de l'établissement de modèles pour banques de données)," in *Patrimoine manuscrit et vie intellectuelle de l'Asie centrale islamique*,

Ed. Ashirbek Muminov *et al.* Cahiers d'Asie Centrale 7 (Aix-en-Provence: EDISUD, 1999), 211–232 and his *Dokumental'nye pamyatniki Srednei Azii*, (Tashkent: Uzbekistan, 1987) can be counted as exceptional ones.

3 The documents referred to are: Tsentral'nyi Gosudarstvennyi Arkhiv Respubliki Uzbekistan (further TsGA) f.323, op.1, ed. khr.1 (dated 1002/1594), TsGA f.323, op.1, ed. Khr.7 (dated 1024/1615), TsGA f.323, op.1, ed. Khr.1303 (dated 1173/1759), TsGA f.323, op.1, ed. Khr.305/22 (date not mentioned, but before 1256/1840) and the waqf deed published in Olga D. Chekhovich, and A.B. Vil'danova, "Vaqf Subḫān-Qulī-Khāna Bukharskogo 1693g.," *Pis'mennye Pamyatniki Vostoka*, 1973 [1979], 213–235 (facsimile 308–322). The text of the closing formula has been divided into four sections by the author.

4 This Persian word "*dast*" must be understood as the translation of its Arabic equivalent "*yad*," which means "possession" in a legal context.

5 See W. Heffening, s.v. "Waḳf," *Encyclopaedia of Islam.* 1st Ed. The state of being binding of waqf is expressed by the following passage excerpted from famous Hadith (see al-Marghīnānī, *Hidāya* (printed on the margin of Ibn al-Humām, *Sharḥ Fatḥ al-Qadīr*, Cairo: Maktabat al-Tijarat al-kubra, 1356/1937–8), 5:41; Ibn al-Humām, *Sharḥ Fatḥ al-Qadīr* (Cairo: Maktabat al-Tijarat al-kubra, 1356/1937–8), 5:41, "*lā yubā'u wa-lā yūhabu wa-lā yūrathu.*" (It may not be sold, donated, or inherited.)

6 See, for example: Mohamed Khadr, "Deux actes de *waqf* d'un Qarakhānide d'Asie centrale," *Journal Asiatique* 255(1967): 320 (dated 1066); Olga D. Chekhovich, et al., *Bukharskii vakf XIIIv.*, (Moscow: Nauka, 1979), 58–60 (dated 1299); Olga D. Chekhovich, *Bukharskie dokumenty XIV veka*, (Tashkent: Nauka, 1965), 190–191 (doc.2 dated 1326).

7 Ibn al-Humām, *Fatḥ al-Qadīr*, 5:41.

8 The word *ḥākim* is used here to denote qadi.

9 Chekhovich *et al. Bukharskii vakf*, 59–60.

10 That the description of delivery (*taslīm*) is included in the main text of a waqf deed and thus does not form the part of the *sijill* can be regarded as another feature of the separate *sijill*s. As will be explained in the following chapter, the declaration of delivery has to do with the condition for the completion of waqf. In the closing formula in question, the declaration of *taslīm* has the function of introducing the description of the lawsuit to be caused by a *wāqif* with intention of revoking waqf after its completion.

11 See Olga D. Chekhovich, *Samarkandskie dokumenty XV-XVI vv.: O vladeniyakh Khodzhi Aḥrāra v Srednei Azii i Afganistane* (Moscow: Nauka, 1974), 78 (doc.5 dated 1470), 174 (doc. 10 dated 1489), 262 (doc. 11 before 1490), 293 (doc. 12 before 1490).

12 See, for example: Khadr, "Deux actes," 319–320, and Chekhovich, *Bukharskie dokumenty*, 199–200 (doc. 4 dated 1333).

13 It is suggested by the following passage found in the closing formula: "… the qadi whose noble name and sublime surname would adorn the bottom of this document under his seal …."

14 al-Khwārazmī, *Fatāwā Shībānī* , Institut Vostokovedeniya Akademii Nauk Respubliki Uzbekistan (further IV AN RUz), ruk.6112, 91a; do., ruk.11282, 90a–b. On al-Khwārazmī's *Fatāwā Shībānī* see Areksandr A. Semenov *et al.* ed. *Sobranie vostochnykh rukopisei Akademii nauk Uzbekskoi SSR*, 11 vols. (Tashkent, Akademya nauk Uzbekskoi SSR, 1952–1987), 8:290–296.

15 al-Kūhistānī , *Jāmiᶜ al-Rumūz*, IV AN RUz , lit.7836, vol. 3, 121. On al-Kūhistānī and his *Jāmiᶜ al-Rumūz* see Semenov *et al.* ed. *Sobranie*, 4: 243–44.

16 Possibly al-Kirmānī's *Jawāhir al-fatāwī* is indicated by this abbreviated title. See Carl Brockelmann, *Geschichte der arabischen Litteratur*, Supplement. (Leiden: E.J. Brill, 1937), 1: 657.

17 al-Kirmānī's *Jawāhir al-fatāwī* appears to have been compiled in the thirteenth century.
18 However, it is not clear whether the lawsuit would actually be carried out at the time when a separate *sijill* is still attached to a waqf deed.
19 The list of manuscripts turned into waqf for the library of the madrasa of Qul Baba Kukaltash founded at Bukhara at the end of the sixteenth century clearly reflects the situation. The list contains 341 manuscripts, arranged by subject matter. Among them are 110 manuscripts of juristic works, of which 47 copies are *Hidāya* and its various commentaries [TsGA, f.323, op.1, ed. khr.1]. Otdel rukopisei Rossiiskoi Natsional'noi Biblioteki, Kaufman, No.144 also witnesses to the authoritative position enjoyed by *Hidāya* in the intellectual life of Central Asia at that time (on the basic data of the document, see O. M. Yastrebova, *Persidskie i tadzhikskie dokumenty v otdele rukopisei Rossiiskoi Natsional'noi Biblioteki*, [Sankt-Peterburg: Rossiiskaya Natsional'naya Biblioteka, 1999], 133). The document itself has no date; however, certain characteristics suggest it may be related to the second half of the nineteenth or the beginning of the twentieth century. It contains a list of books most likely studied at Central Asian madrasas. The books are arranged in order of the process of study, that is, from the most elementary textbooks to the most complex, and according to the document this process ends with *Hidāya.*
20 On the Hanafite waqf law in general, see Johann Kresmárik, "Das Waḳfrecht vom Standpunkte des Śarîʿatrechtes nach der ḥanefitischen Schule: Ein Beitrag zum Studium des islamitischen Rechtes," *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 45(1891): 511–576 and also Heffening, s.v. "Waḳf."
21 al-Marghīnānī, *Hidāya*, 40.
22 Ibn al-Humām, *Fatḥ al-Qadīr*, 5:40.
23 al-Marghīnānī, *Hidāya*, 40.
24 al-Marghīnānī, *Hidāya*, 40.
25 "*yazūlu mulku al-wāqifi lā ilā mālikin*" [Ibn al-Humām, *Fatḥ al-Qadīr*, 5:40 (citing Qāḍīkhān)].
26 al-Marghīnānī, *Hidāya*, 40.
27 Ibn al-Humām, *Fatḥ al-Qadīr*, 5:42.
28 Ibn al-Humām, *Fatḥ al-Qadīr*, 5:40–41.
29 al-Marghīnānī, *Hidāya*, 39, 43.
30 This assumption is reinforced by the following passage found in the closing formula of TsGA, f.323, op.1, ed. khr.305/22: "*va bāz ān-rā ba-ʿillat-i ʿadam-i luzūm mutaṣarrif shuda būdand ka-mā huwa maẕhab-i … ḥażrat-i imām-i aʿẓam-i Abī Ḥanīfa Kūfī* …" (Then the *wāqif* wanted to put these properties changed into waqf at his own disposal again under the pretext that [the waqf] lacked binding force, as was the teachings of His Excellency Abu Hanifa Kufi.)
31 Since waqf cannot be completed until *khurūj* takes place, controversy over the condition for *khurūj* inevitably has to do with the completion of waqf. See Note 10.
32 al-Marghīnānī, *Hidāya*, 45.
33 To put it at its most extreme, *luzūm* can be obtained by the judgment confirming *ṣiḥḥa* only, since the latter inevitably entails the former via *khurūj*. In this sense, it is quite suggestive that in the earliest *sijill* qadi's judgment refers only to *ṣiḥḥa* of the waqf in question (Khadr, "Deux actes," 320).
34 The following passage found in the *sijill* cited in the previous chapter apparently indicates Abu Yusuf, Muhammad al-Shaybani, and those who followed them: "… the pious imams of the past – May God have mercy upon them – who had upheld the legality of a waqf like this and the binding force and validity of a *ṣadaqa* in this form …."

2

FORMAL ASPECTS OF QAJAR DEEDS OF SALE

Christoph WERNER

Exploring the formal characteristics of archival material might not initially appear as a particularly thrilling endeavour. However, there are good reasons to let the actual subject matter of documents rest for a while. For one, the analysis and description of both outward appearance and internal formulary structure of documents is an important step towards their correct understanding – and thus a precondition for any subsequent interpretation of contents. This ancillary aspect of diplomatic studies does not only facilitate the basic task of reading a document in hand – or prior to "reading," browsing through material found in an unspecified file or collection – it might also help to ascertain defective dates or to verify whether one is dealing with an original, a contemporary copy, or a much later effected transcript. In many instances, an awareness of formularies might be the only way to find out about what one is actually looking at. Thus, to give an example, what appears at first glance to be a waqf deed, might in fact turn out to be only the legal acknowledgement of a previously or separately established foundation. Equally, what starts out as a contract of sale might deviate from the standard and include additional stipulations, often constituting a mixture of sale, rental agreements, and the reciprocal settlement of divergent claims.

The proper identification of a document's external and internal characteristics should consequently also prevent an erroneous or misleading categorisation. This demand sounds much easier than it turns out to be in practice; in fact, there is little common ground among historians in Iran, as the primary editors of document collections, on basic questions of terminology and the organisation of the often extensive material in their hands. Some prefer thematic principles, such as everything dealing with landed property, endowments, or water rights, while others follow strict formal guidelines and distinguish along legal concepts and issuing authorities.[1] The absence of established categories is also a characteristic mark of many archival and manuscript catalogues, where terms such as *sanad*, *qabālah*, or *raqam* ("document," "deed," "decree") continue to be used indiscriminately, often in combinations such as *qabālah-i kharīd-u-furūsh*

("deed of purchase and sale") that have no basis in neither legal terminology, nor in the wording of the documents.

In a second step, the "technical" features of documents provide precious information on the social, administrative and legal institutions that produced them. They offer an insider's view into the workings of the state bureaucracy or the judicial system and inform us about officials involved, as well as about various procedural aspects – this is something other sources are rarely able to do. Registry remarks and endorsing attestations may reveal much about how and by whom decrees were issued, how requests were treated and how civil contracts were recorded and declared legally valid. Apart from these utilitarian considerations, it should be stressed that documents as the material output of a past administration, in their own right, deserve as much attention as other artefacts of human civilisation. To examine formal traits of archival material should therefore neither be considered arcane, nor esoteric.

Documents characterised as "private deeds" offer the unique chance to learn about the workings of the civil judicial system, commonly often referred to as the shariʿa courts. In an Islamic context "private" denotes court or notary deeds, written and ascertained by Islamic jurists, as opposed to decrees and orders issued by state chancelleries. The differentiation between "private" documents, whether dealing with sale, rent, marriage, inheritance, or pious foundations, and royal or administrative decrees is however not always clear-cut and relies often more on silent consensus, than on exact definitions.[2] Diplomatic studies on private deeds – whether written in Arabic or Persian – have hitherto focused almost exclusively on the earliest available specimens, where age alone justified closer interest. The modern and early modern periods, to the contrary, have not received adequate attention, although these are the periods when archival material becomes abundant.

This chapter intends to start filling this gap with a closer examination of Iranian contracts of sale from the eighteenth and nineteenth century. The choice of deeds of sale as a model for private documents lies first in the relative simplicity of form and structure, as well as the plainness of the transactions recorded in them. This, together with the fact that the contract of sale constitutes a prototype for other contractual forms in Islamic law, for example rent or marriage, makes results derived from contracts of sale also applicable to other contracts.[3]

My objectives are twofold, revolving around the incentives outlined above; the first part aims primarily at offering practical support to those who wish to deal seriously with Persian private documents from the Qajar period through a systematic analysis of outer appearance, structure, and formulas. Such an attempt needs to explain certain phenomena with reference to earlier periods or other regions, and thus offers also comparative and diachronic perspectives. A closer look on Qajar deeds of sale discloses the final stage of a century-long development of writing legal deeds in Persian that started before the Ilkhanid period and ended without a clear demarcation only in the 1930s. Much of the

legal terminology, as well as many basic concepts of contractual law, survived the introduction of Western codified law. However, with the effective shift of authority in civil legal affairs from the ulama to a new state bureaucracy, the diplomatic and formal development of deeds came to a halt.[4] This means that what we see is not necessarily a completed, but irrevocably terminated process. We are investigating diplomatic, judicial and formal aspects not from the point of their earliest origins, but rather from the other end, in the last stage of their existence.[5]

The second part elaborates on this diachronic perspective and treats both long-term developments in the formulary composition of deeds of sale and issues beyond immediate ancillary concerns. One of them relates to the question whether the establishment of Shiʿism as state religion under the Safavids and the emergence of independent Usuli-jurists in Iran is mirrored in the formularies and appearance of private deeds. The other looks for the reasons behind the virtual disappearance of the century-old standard employed for the documentation of sale (*bayʿ*) towards the end of the Qajar period and its replacement with the legal category of settlement (*ṣulḥ*).

Characteristics of Qajar deeds of sale (*mubāyaʿah*)

The deed edited here as an exemplary model for Qajar contracts of sale (see Figure 2.1 and the accompanying step-by-step text edition with translation) actually precedes the establishment of the Qajar dynasty for at least two decades.[6] However, since private documents are much less affected by dynastic change than royal decrees, this is not crucial for our purpose. More important is the fact that this document from 1186AH, equivalent to the year 1772, serves as a perfect starting point that comprises already all the major features that characterise contractual deeds of the nineteenth century. In addition, with its plain and straightforward appearance in both style and outward execution – which is rarely achieved in deeds from the late Qajar period – this deed can be considered as a qualified archetype. This suggestion should however not pass without an introductory note of caution: since private deeds are the product of a pre-modern, neither unified, nor centralised judicial institution, every single deed is unique, shaped by the individual preferences of both the issuing jurist and the requisitioning client.

Outward appearance

Paper and script

Contracts appear to have been written on whatever kind of paper was at hand, but there is a marked change in size and quality of the writing material in the course of the nineteenth century. Prior to the European economic penetration of Iran, most of the paper would have been produced in the region, providing large sheets

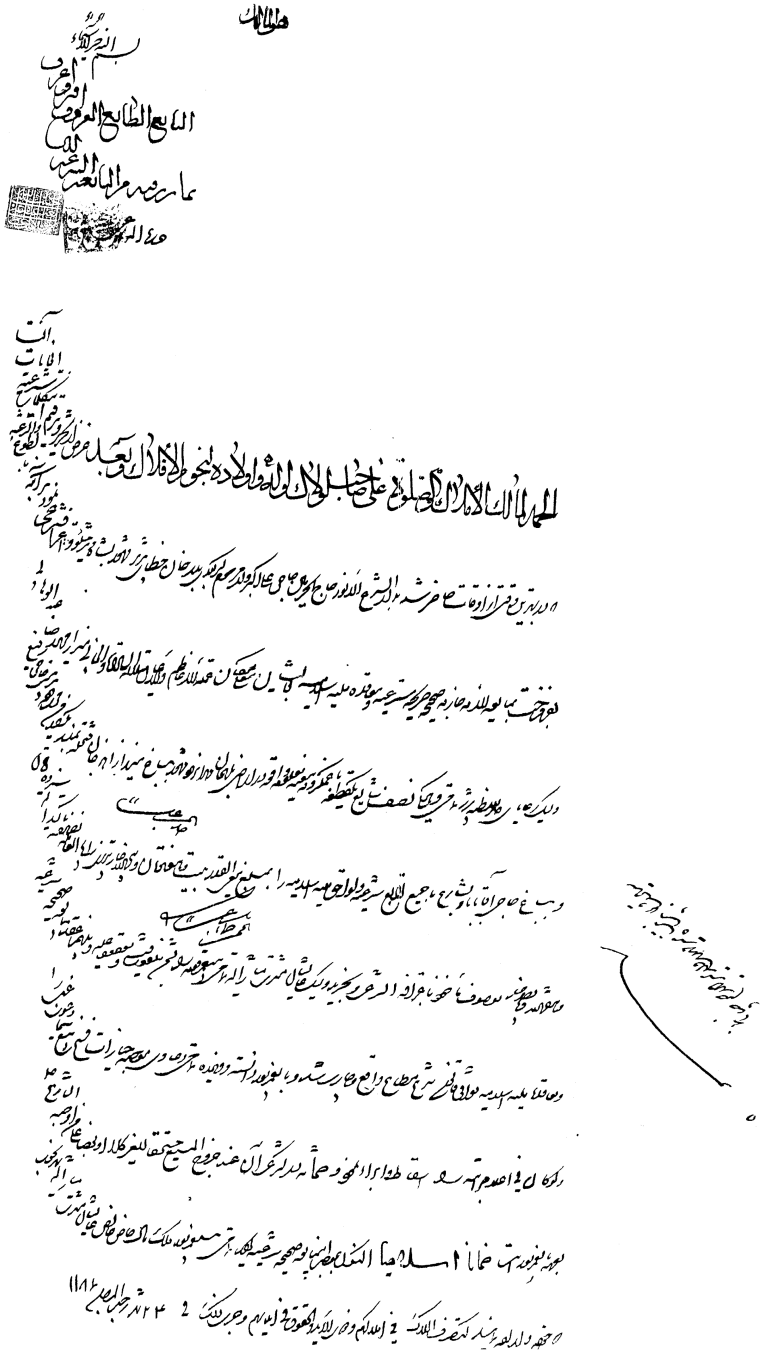


Figure 2.1 Sale of the Bagh-i Mirza Zahid – *mubāyaʿah* dated 1186/1772

of heavy and durable quality. The format of contracts before the nineteenth century is therefore often surprisingly large, at times exceeding a modern A3 size, and they are in an astonishingly good condition.[7] With the influx of cheap, imported paper, this changes considerably: sometimes only small scraps of paper are used, the quality and durability suffered, the use of coloured paper was not deemed inappropriate (a dark blue seems to have been quite popular around the 1830s and 1840s, and often one can detect the watermarks of foreign, especially Russian, producers. Without venturing further into the details of production and trade, the quality and appearance of the paper on which a deed was written should be seen as one of the most important immediate impressions one can get from a document (as long as one is allowed to touch the original). It might be of help to ascertain a given date, as well as to assess the importance of a transaction and the parties involved.

Moving from paper to script, one will immediately notice that the quality of writing also differs extremely from one document to another. Almost all documents are written in a mixture of *shikastah* and *nastaʿlīq*, sometimes more inclined to the one side, and sometimes to the other, although pure *nastaʿlīq* is extremely rare.[8] As a general rule one can rely on the close correlation between the significance of the contract and the care applied to its writing. However, exceptions are common and even deeds involving Qajar princes and high dignitaries at times feature very crude hands. Crude means scripts that appear rather square and slightly jerky, i.e. not particularly pleasant to the eye, but should be distinguished clearly from the writing of people without professional training. The difference is important, because even a crude, but traditionally trained hand is easy to read because of its inherent consistency.

Our example might be representative for a deed executed carefully, but without the attempt to write elegantly or particularly smoothly. Especially towards the end, the concentration of the scribe appears to have waned, and his writing shows traits of what I described above as crude – going hand in hand with a denser and deliberately smaller script. However, as we will see below, such a judgement on the scribe's moral is clearly erroneous, since such an alteration is part of the overall graphic design.

What catches the eye, is the use of a different script for the *ḥamdala*, the formula of praise for God, in the first line of the main text. The use of a *thulth*-like script for Arabic passages is quite frequent, and it is consequently also often used for the judge's endorsements, as in our example, and for the "invocation."

Graphic division and text markers

Private deeds from our period follow a basic graphic partition into two zones that are clearly separated from each other. One comprises the main text of the deed, positioned towards the left bottom corner, while the top and right side margins serve as a virtual container for invocations, endorsements, testimonies, remarks, and seals. This division is rarely violated, and the graphic means to separate the

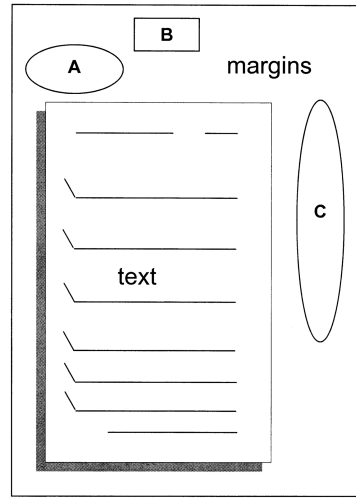


Figure 2.2 Abstract layout sketch of a private deed

"open" side of the deed, which allows marginal additions, from the "closed" side are easily recognisable.

Towards the bottom margin this is a gradually decreasing line spacing and, as we noticed already, the use of a smaller and denser script. On the left side the final words of each line are drawn upwards, one on top of each other, which gives the impression of a distinct edge that fences off the free space between the lines. Both techniques together create a darker, frame-like border area to the left and bottom side. One should be careful not to interpret them as the repeated and unsuccessful attempt of the scribe to press as much information as possible in a line or on a given piece of paper after running out of space.[9]

Further graphic markers can be found inside the main text. We mentioned already the use of a different script (*thulth*) to separate the Arabic preamble from the proper text of the deed that begins with *va baʿd,* "and then." If no enlarged *ḥamdala* exists, then a simple formula, such as *baʿd al-ḥamd va al-ṣalavāt*, is often emphasised by a different script, or just a broader pen, and combined with an approximate one-third indent of the first line (see Figure 2.3).[10] This version with right-side indent of the first line appears to have become increasingly popular in the course of the nineteenth century, particularly for simple deeds. A corresponding left-side indent often occurs at the bottom end of the text, when the date is set with a two-word-space apart from the left margin, thus creating space for an optional concluding seal by the seller.

In addition to the indentation that graphically defines the beginning and the end of a deed, the text itself often contains visual pointers that facilitate orientation by highlighting keywords through broader or enhanced writing. In very elaborate deeds, this might also be done in coloured ink. Such keywords might comprise, apart from the mentioned *va baʿd* – or *ammā baʿd*, the verb

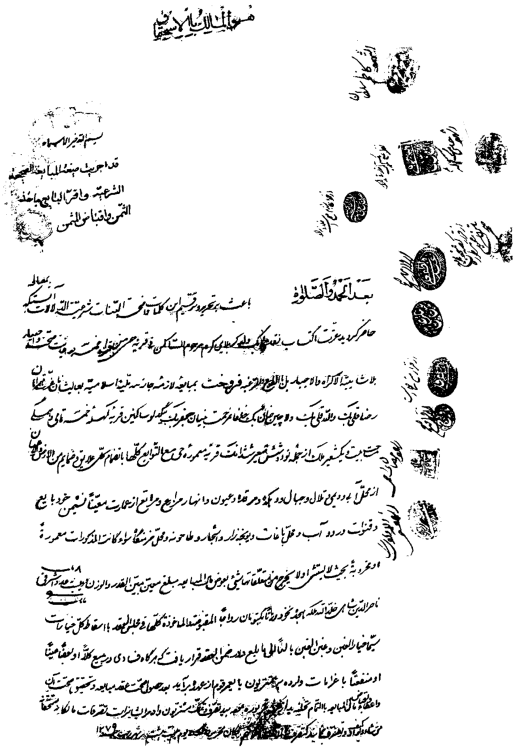


Figure 2.3 Sale deed from 1279/1863

indicating the concrete nature of the transaction (*bifurūkht*), the agreed price (*mablagh*), the phrase introducing the sold object (*hamagī va tamāmī*), the cardinal points in border demarcations, and sometimes key expressions of the legal clauses, in our example the wording of *żamānan islāmīyan* ("liability according to Islamic conventions").[11] The insertion of financial details in accountancy script (*siyāq*) in between the lines, also serves indirectly as a marker in that it clearly denotes the place where the transactional part of the text ends and the legal clauses begin.

We will treat the contents of the margins in more detail further down, but what appears at first glance as a widely chaotic and disorganised area, follows nevertheless certain rules. We designated the upper and right side margin as a container for a wide variety of floating objects, such as endorsements by judges and notaries, invocations and other religious formulae, the separately recorded name of a high ranking seller or buyer, later affected additions (such as a change in price, separate acknowledgements, or special stipulations), witness remarks and testimonies with seals, and notes on the number of issued copies of the deed. The margins do not usually contain lists of any kind (objects, prices, borders), which tend be placed rather in-between the lines of the main text.

In order to orient oneself among this multiplicity of diverse objects, one should be aware that they are not inserted all at once. Thus invocations and religious formula would be written before endorsements, and endorsements usually separately from testimonies. A rough guideline is that objects tend to be arranged clockwise, starting at the top left corner, since the paper is turned anti-clockwise in the process of adding remarks, which results in the seemingly topsy-turvy positioning of seals and notes. The upper left area is usually reserved for endorsements (A in Figure 2.2), the upper central area for religious invocations (B), and the right side margin for the testimonies made by the witnesses (C).

Main text

Traditional diplomatics, as the ancillary science dealing with documents, would define textual segments of private deeds, similar to chancellery documents, according to categories derived from European scholarship. Consequently, we would have to define the *protocol*, or introductory part, the *text* itself with further subdivisions, and finally the concluding protocol (also called *eschatokoll*), with the date, closing formula, and final attestations.

While such a distinction can be useful, especially for a wider comparative approach, whether contrasting private and public documents, deeds from different areas of the Islamic world, or even documents from completely diverse cultural backgrounds, the application of such terms to Persian documents is not unproblematic. Their close indebtedness to European models always carries a notion of Eurocentricity, and the use of Latin terminology, although introduced very convincingly by Busse for Safavid decrees, consequently failed to catch on in Iran itself.[12] Furthermore, many textual parts that can be determined in royal decrees, such as *arenga, narratio,* or *dispositio*, rarely appear in private deeds and introductory and closing parts might often turn out to be extremely brief.[13]

Instead, I will choose an alternative, more pragmatic approach and proceed in the analysis of our example according to the above outlined graphical, twofold division (margins/text), and in the text along the internal optical and textual marker, employing four main thematic divisions: introduction, transaction, legal clauses, conclusion and date.

Introduction

The introductory part begins in our example with an extended and elaborate *ḥamdala* and *taṣliyah*, the praise of God and the Prophet with his kin. Formula employed in contracts of sale would often include allusions to the Koranic verse 2:275 of "God permitted sale and prohibited usury," often in the form of *aḥalla al-bayʿ wa al-shirā wa ḥarrama al-ghaṣb wa al-ribā*, [14] and make frequent use of *mālik,* the Owner, to relate to God.[15] In fact, both are very clear indicators for a contract of sale and serve as flags that signal from the start the type of contract concluded.

Table 2.1 Text edition, first part, of the model deed of sale from 1186/1772

Introduction	
Ḥamdala & taṣliyah	
Praise be to God, the Owner of all Properties, and Hail to the one addressed as "Who but you" [i.e. Muhammad], his kin and descendants, verily they are the heavens' stars,	الحمد لمالک الاملاک و الصلوة علی صاحب لولاک و آله و اولاده لنجوم الافلاک
Moving on	
and then:	و بعد
Declaration of purpose	
the reason for writing and composing these words of benign lawfulness is the following:	غرض از تحریر و ترقیم این کلمات شرعیة العنایات آنست

The formula of praise is immediately followed by the expression *va baʿd* or *ammā baʿd*, that is, a call to move on. In more elaborate documents, such as prolonged vaqf deeds, this is a crucial marker for the onset of the actual transaction, but most sale deeds would not include lengthy rhetorical passages at the beginning. The *va baʿd* is then simply used to separate the *ḥamdala* and the following text. In concise deeds initial formulas of praise and *va baʿd* are consequently often contracted to a mere *baʿd al-ḥamd va al-ṣalavāt,* "after praise and laudation."

Still part of the introduction is the formulaic declaration of purpose, in our document: *gharaż az taḥrīr va tarqīm-i īn kalimāt-i sharʿīyat al-ʿināyāt ān-ast*. Constructed always along the line of "the reason for writing this deed is as follows," its actual wording is left up to the discretion of the scribe. For "purpose," *gharaż*, one can also use *bāʿiṯ, murād*, *maqṣad,* or *sabab,* synonyms for *taḥrīr* include *tasṭīr*, *tarqīm*, and *nigārish,* while the deed itself might be referred to simply as *kalām, ṣuṭūr, ʿibārāt, arqām,* or more to the point as *varaqah* or *vaṯīqah*. There is no limit to possible qualifying additions, often in the form of Arabic compounds including *sharʿī* or *vāżiḥ*, however, the elegance of the phrase ultimately relies on the judicious use of rhymed prose and alliteration.

This special type of "purpose-declaration" can be found in the introductory section of Persian private documents at least since the ninth/fifteenth century, i.e. already prior to the Safavid period. Although at this early time, many deeds of sale still preferred the older introductory formula of *īn-ẕikrī ast* ("this is a record/note that . . .") that we know already from pre-Mongol deeds.[16] In our period, the use of a *gharaż . . . ān ast* type opening was considered almost obligatory for most private documents and was rarely omitted. The purpose-declaration phrase in the introduction thus constitutes one of the most obvious textual characteristics of Qajar deeds.

In very rare instances of particularly luxurious deeds, the whole introductory part including *ḥamdala*, *taṣliyah*, and declaration of purpose might be elaborated into a dense masterpiece of embellished rhetoric, incorporating quotations from the Qurʾan and Hadith, and introducing literary motives and metaphors appropriate to the object exchanged in the contract.[17]

Transaction

PLACE AND TIME OF THE *MAJLIS*

The first element of the text's main section that outlines the actual transaction, introduces the abstract time and place of the contract's conclusion. It is optional and therefore quite often omitted, especially in shorter deeds. The unity of place and time where the contracting parties meet and the sale is concluded is crucial in the legal definition of sale and referred to in jurisprudential literature as the *majlis* (session, meeting, gathering).[18] As a theoretical concept, it comprises the consequent acts of offer (*īǰāb*) and acceptance (*qabūl*) that only together guarantee the validity of a contract of sale. Concrete reference to "acceptance" and "offer" is however rarely made in this context and if inserted in the deed, is rather part of the legal clauses or included in the endorsement.

In our example, the abstract reference to place and time serves primarily as a dramatic device to introduce the first protagonist of the contract and prepares the stage where the selling party makes its first appearance: *ḥāżir shud*. The precise time is of no practical importance and consequently turns into a token of good omen: "in the best of times."[19] Interesting to note from a comparative point of view is that in many Central-Asian deeds of sale and at least in one of the pre-Mongol Persian deeds from Ardabil this concept of time is real and the deeds actually begin with the mention of the date, immediately after the *ammā baʿd* formula.[20] However, with the transferral of the date to the end of the text only a symbolic reminiscence of time remains.

The reference to the place of the transaction is more difficult to analyse. Similar to many other examples of official Persian prose the question remains whether to read terms and expressions as "real" or merely as rhetorical clichés. Clearly, the reference to the "House of the Law" (*dār al-sharʿ*) in our model contract is too imprecise to allow any efficient location of the event. Neither the town or quarter of the transaction is usually named, nor is the name of the presiding judge or notary revealed. Furthermore, the idea that large cities contained only one central religious court that offered legal services is clearly erroneous.[21]

Still, emphasis is placed on the fact that the contractual agreement is located not anywhere, but at a place especially designated for legal business, and that the contract is drawn up in the presence of both parties and a judge. Even if reference to place and time are omitted, the fact that the parties were present or appeared in person is hinted at with a simple *ḥāżir gardīdand*. Alternatives for *dār al-sharʿ* can be *maḥżar*, *maḥkamah*, or even echoing the above stated legal term *majlis-i*

Table 2.2 Text edition, second part, of the model deed of sale from 1186/1772

Transaction	
Place and time of the majlis	
In the best of times came to the radiant 'House of Law',	که در بهترین وقت از اوقات حاضر شد بدار الشرع الانور
Seller	
the pilgrim to the Haramain, Hajji ʿAli Akbar, son of the late Karbala'i Badr Khan, a preacher from Tabriz known as Shah Vermeshlu	حاج الحرمین حاجی علی اکبر ولد مرحوم کربلای بدر خان خطابی تبریز مشهور بشاه ویرمشلو
Acknowledgement of free will	
who legally acknowledged that – of his own free will and desire –	و اعتراف شرعی نمود بر آنکه بالطوع والرغبة
Selling	
he had sold	بفروخت
Type of contract	
through a legally correct and valid, binding and obliging *mubāyaʿa* and a covenant according to Islamic denomination	بمبایعه لازمه جازمه صحیحه صریحه شرعیه و معاقده ملیه اسلامیه
Buyer	
to the eminent, high-ranking, a pillar of grandees and notables and scion of sayyids and noblemen, Mirza Muhammad Riza ʿAbd al-Vahhabi, the *vakīl-i raʿāyā* of the *dār al-salṭana* Tabriz	بعالیشان معلی مکان عمدة الاعاظم والاعیان سلالة الساداة والنجبائی میرزا محمد رضا عبد الوهابی وکیل رعایای دار السلطنه تبریز
Object marker	
all of	تمامی و همگی
Object	
the jointly held half of a well-known and demarcated garden, planted with vines, located in the area of Malahjan of Mihranrud, known as the Bagh-i Mirza Zahid Khan with the size of 100 man 'seed'	نصف شایع یک قطعه باغ مکرومه معینه معلومه واقعه در اراضی ملهجان مهرانرود مشهور بباغ میرزا زاهد خان مشتمله بمبذر یکصد من
Borders	
which borders the land of Hajji Rafiʿ, the garden of Hajji Aqa Baba and the street	محدوده بزمین حاجی رفیع و بباغ حاجی آقا بابا و بشارع

Appurtenances	
with all legal appurtenances and accessories according to Islamic convention	با جمیع توابع شرعیه و لواحق ملیه اسلامیه را
Price	
for the price of a determined amount of 27 tuman and 5,000 dinar of current circulation, its affirmed half being 13 tuman and 7,500 dinar as specified,	سیاق: ۲۷ تومان ۵۰۰۰ دینار بمبلغ معین القدر بیست و هفت تومان و پنج هزار دینار تبریزی رایج المعامله نصفه تاکیداً له سیزده تومان و هفت هزار و پانصد دینار سیاق: ۱۳ تومان ۷۵۰۰ دینار

*shar*ʿ.[22] There is a certain tendency to move from a terminology that evokes the notion of a "court" (as in *dār al-shar*ʿ), mirroring a still institutionalised administration of Islamic law in the eighteenth century, to a more individualised expression of the venue that hints at the presiding jurist, as in the address *ʿālīḥażrat-i ʿālīmaḥżar-i shar*ʿ towards the end of the Qajar period.[23]

CONTRACTUAL PARTIES (SELLER AND BUYER)

The party selling, as the active part that initiates the transaction is in our period always introduced first.[24] It can consist of one or several individuals, and if not present in person, can be represented by a proxy (*vakīl*). Especially women and minors often are represented by male relatives or their guardian, but also high ranking dignitaries often preferred to do business through their agents. Depending on the status of the involved individuals their names might be preceded by an elaborate chain of honorifics, that run parallel to honorific epithets employed in contemporary decrees. In most cases the father's name is provided (in the case of women sometimes also the name of the husband or another close male relative), sometimes followed by other personal characteristics, such as residence, profession, or nicknames. The same is true for the other contractual party, which is usually introduced only after the formulas naming the actual transaction. There is no formulary distinction in the way both parties are presented, but we sometimes find the seller's seal in between the lines where his name is mentioned, in addition to placing his seal at the final end of the contract, which is never the case with the buyer.

SELLING, ACKNOWLEDGEMENT OF FREE WILL, AND TYPE OF CONTRACT

The keyword that functions as an axis around which the recorded transaction of sale revolves is plain and direct Persian: *bifurūkht* ("he/she sold"). Set in the past tense, as is the rest of the contract, the exclusive use of the prefix *bi-* at this point emphasises the action grammatically, while elevated, broadened or coloured script marks this keyword graphically.

Arranged around this keyword are elaborations on the theme of free will and a more precise designation of the mode of contract. It is a crucial stipulation for the validity of the sale that the selling party acts out of free will, is not under duress and under full physical and mental control. As a mere legal prerequisite, it is usually considered sufficient to insert Arabic fragments as in our example: *bi al-ṭawʿ wa al-raghba*, often also in the form of *ṭawʿan raghbatan*. More elaborate forms would exclude possible pressure (i.e. *dūn al-ikrāh wa al-ijbār*) and include mention of the seller's sane state (i.e. *dar ḥālat-i siḥḥat*). Note that this is only a requirement for the seller, not for the one actually purchasing, since the former is the one initiating the transaction.

One can perceive a certain inclination to balance the rather candid Persian verb of action with an Arabicised explanation. This is done through the additional reference to the exact type of contract employed in the contract which, in our case, is called a *mubāyaʿah*. If one looks for an unambiguous definition of a Qajar deed as contract of sale, then the term *mubāyaʿah* serves as a clear internal classifying sign.[25] Some document collections also arrange deeds accordingly and clearly separate contracts of this type from other contractual transactions effecting factual sale, such as settlement-contracts.[26] The systemic use of Arabic verbal nouns derived from the III. stem to denote contractual types is among the most interesting phenomena of early modern Persian legal language. Parallel to *mubāyaʿah*, we encounter *muʾājarah, muṣālaḥah*, or the generic term *muʿāqadah*.

The deliberately ambiguous style that oscillates between Persian and Arabic becomes evident in the long chain of *iżāfah*-connected attributes defining the contract as legally correct and binding. Thus, *ba-mubāyaʿah-i lāzimah-i jāzimah-i ṣaḥīḥah-i ṣarīḥah-i sharʿiyyah,* could in theory also be read *bi-mubāyaʿatin lāzimatin jāzimatin…,* especially since neither *tāʾ marbūṭa,* nor *iżāfah* are usually indicated in writing.

Despite the fact that in our example the actual transaction is introduced with a separate clause of acknowledgment (*iʿtirāf-i sharʿī namūd*), the contractual type is not that of a unilateral *iqrār*, and should also be distinguished from documents where this is a recurring and obligatory part of the deed.[27]

One should be aware that the structure outlined above is neither rigid, nor obligatory with regard to all mentioned components. Thus, the order of single elements can be changed at will and certain parts can be omitted for the sake of convenience. Another deed might start, for example, with a more simple *furūkht*, then adding an elaborate clause recording the seller's free will, while leaving out any reference to the type of contract, which is in any case repeated in the legal paragraphs of the deed.[28]

OBJECT

What is actually sold or transferred, the Arabo-Persian legal term for the sold object being *mabīʿ*, is introduced with the words of *tamāmī va hamagī*, or at

times even tripartite as *hamagī va tamāmī va jumlagī*, meaning simply "the whole and complete." That in many instances the object of sale does not constitute a complete entity, but might consist only of a fragment of a larger unit, such as, for example, half a one-sixth (*dāng*) of a village, should not be seen as a contradiction. In fact, the formula simply serves as a marker for the object to come, separating it from the previous text, or in case there are several distinct objects included in the transaction, also from a following item, for example shares of a *qanāt* in the vicinity.

How detailed the description of the sold object turns out to be varies considerably from one document to the other. To a certain decree, this depends on the object's value and size, but equally on whether it is widely known under a specific name, is located in the area, and whether the contract of sale is based on previous contracts that already define the object in a sufficient manner. In the latter case, deeds documenting the history of previous ownership would have been exchanged together with the object in the course of the transaction – thus making yet another detailed description superfluous. Included often is therefore the provenance of the sold object, or how, for example, through inheritance, it came into the possession of the present selling owner.

In most instances, the description of the object is reduced to a kind of "index card" carrying certain keyword entries that allow those who know the area and the object to recall its characteristics, without providing the kind of in-depth information that would allow an outsider, including the historian, to venture an evaluation or to pin it down on a map.

A typical "index-card" would contain the number or exact fraction of what is sold, following immediately after the neutral object marker *hamagī va tamāmī*. It would include the appropriate count-words, such as *qiṭʿah* or *bāb*, and a clear and unambiguous categorisation, such as *bāgh*, *tīmchah*, *khāna*, *zamīn,* or *qanāt*. Since often only shares of larger objects were exchanged that were commonly held and operated, expressions such as *shāyiʿ* or *mushāʿ* are inserted to indicate jointly managed property. Next comes a rough indication of location with *vāqiʿah dar* that might refer to a rural district or an urban quarter without further details, before the actual name of the object, if it carries one, is given with the words of *mashhūr bah*. If size or quantity plays a role, such as the size of a field, the amount of water from a qanat or the number of shops in a caravanserai, this might be mentioned separately with *mushtamilah bah*.

BORDERS AND APPURTENANCES

The borders and exact demarcations of the object, although of significance in theoretical legal literature, are usually part of the above "index-card" and kept to an absolute minimum. Border demarcations start with the keyword of *maḥdūdah bah* and a short enumeration of adjacent properties, in most instances without the mention of cardinal points. In rare instances, however, borders might be listed under the four points of the compass in more detail, but then rather in

tabular form in-between lines, rather than as part of the main text.[29] Tabular arrangements are also widespread if a contract of sale includes more than two separate objects.

Without the separately recorded price these standardised descriptions, even less informative than flyers from modern real-estate agents, give only a very sketchy impression of the object's value and quality. It should also be noted that we talk here only about sales of real estate, landed property and water rights, not about the sale of movable property, such as agricultural produce, manufactured objects, or animals, that would require different attributes. Sales of movable objects appear not to have been legally recorded on a regular basis, and if they were registered nevertheless, then it would not have been necessary to preserve documentation on such sales for a longer time, which might explain their absence in family archives.[30]

Reference to the legal appurtenances or accessories of the sold object, or in other words, the explicit mention that the object is sold with everything that law and common sense (*sharʿ* and *ʿurf*) would assume to be an integral part of it, is rather a juridical formality than a real practical necessity. In some deeds, these appurtenances that are mentioned as the *lavāḥiq* or *tavābiʿ* of the object can be spelled out with great love to detail, often introduced by Arabic expressions such as *maʿ jamīʿ mā yataʿalliq bihi/bihā* or *kull mā dhukira au lam yudhkar*. In the case of a village, for example, mention would be made of used and unused qanats, cultivated and uncultivated land, woods, pastures and hamlets.

PRICE AND MODES OF PAYMENT

The price (*mablagh* or *ṣaman*) is mentioned last and thus concludes the actual description of the sale. Graphically however, it is positioned in the centre of the whole deed, highlighting its importance as the most crucial statement of the whole contract – before the composition moves on to the often lengthy, obligatory legal clauses. The amount is always spelled out in words and given usually in the abstract accountancy unit as *tūmān* and *dīnār*. In order to make sure that the amount is not altered, but primarily to allow both quicker access and easier transfer into ledgers, the amount is quite often recorded in *siyāq* as well, added in-between the lines like in our deed.[31] Similarly, the amount is at times repeated as its confirmed half, a practice that stretches far back, but becomes increasingly rare towards the later half of the nineteenth century.

Since the *tūmān* was an accountancy unit that had no direct equivalent in concrete currency, and since coinage was crucial in determining the actual value of money, only few contracts in Qajar times could pass without the explicit mention of the kind of money used in the transaction. The fact that our model contract from the Zand period can do without it, might be seen as a clear indication of the monetary stability during this period. While reference to recent and circulating coinage (*rāyij* or *jadīd al-żarb*) is a standard, we encounter quite

often more detailed definitions such as "for the price of 200 *tūmān* in riyals minted under Fath-ʿAli Shah, with a weight of two *miṣqāl*, eight pieces on one *tūmān*".[32] Or in the later Qajar period with even greater emphasis on weight as "20 *tūmān* in cash of recent coinage with a weight of 24 *nukhūd*". Contracts reflect very clearly the monetary conditions at a certain period, and both parties made sure that at this point no formulaic expressions were used.

Legal clauses

Legal clauses take up the remaining half of our deed and not only in their outer appearance often resemble the cluttered "small print" of modern contracts. Their inclusion was to a certain degree obligatory, although the question to what extent was handled quite differently. Unless they included separate agreements or special conditions (*shurūṭ*), something that is rather rare in most contracts of sale, the actual contents of these standardised clauses were probably of little interest and concern to most clients. The frequently occurring lawsuits and disputes on ownership consequently never refer to the legal clauses of a contract or take up any of the issues treated in them. If contracts are discussed in court protocols, it is first the mere fact of their existence, and second their genuineness, resulting quite often in the question of the credibility of the endorsing judges and the authenticity of their seals.

While both structure and contents of our deed until now followed a relatively straight and logical sequence of providing factual information, from here on the choice of what clauses were included and how they are arranged appears often accidental. It is most convenient to understand this final part of a deed along certain keywords that provide at least a certain orientation. One should, in any case, be prepared for an often deliberate selection of fragments, both Persian and Arabic, that are pieced together often without any attempt to provide syntactic links. The following legal provisions are therefore to be regarded primarily as an intrinsic part of a contract's formulary – and they deserve our attention above all from this perspective.

CONFIRMATION OF EFFECTED TRANSFER AND CONTRACT PUT INTO FORCE

In our example, the transaction is summarised with reference to the price having been taken (*maʾkhūẕ*) by the seller, and the buyer as thus having bought (*bakharīd*) the mentioned object. The contract is once more explicitly defined as a legally valid *mubāyaʿah*. With the effected transfer of price and sale-object the transaction was successfully concluded between them and the contractual agreement thus put into force.

The major keywords at the end of this passage are *vāqiʿ va jārī shud* ("it took place and became effective"). Quite often, though not in our case, another keyword precedes the naming of the contractual type: the employed legal formulary, *ṣīghah*. In more elaborate deeds, the effected exchange would be

defined with further attributes such as *ījāban va qabūlan,* "as offered by the seller and accepted by the buyer," or the formulary would be characterised as having been expressed *ʿarabīyan va fārsīyan*, "in Arabic and Persian." Sometimes the extended wording of the type *ʿaqd-i mubāyaʿah … jārī shud/ gardīd*, "the contract of sale … became effective," would include mention of the general conditions (named as *sharāyiʿ, arkān* or *qavāʿid*) of the contract, that are listed separately in our model contract.

EXCLUSION OF ANNULMENT (*FASKH*) AND GUARANTEE OF LIABILITY (*DARAK*)

The two stipulations dealing with the questions of annulment and liability are not open to individual choice or modification. To be more precise, they form an integral part of the binding legal form of the contract, and most deeds include at least rudimentary allusion to these two concepts of barring annulment of the contract and of guaranteeing liability. Both of them constitute declarations of the selling party that are intended to provide increased security for the buyer, who as the accepting part in the contract, is assured a high amount of security in Islamic contractual law.

In the first declaration, the seller renounces any right to annul the contract (*isqāṭ-i khiyārāt-i faskh*) and abstains deliberately from any future legal action (*daʿvā*) in this regard. This is even valid in case of premeditated fraud – or as the deeds name it, of fraud of the highest or most abominable degree (*ghabn-i afḥash*). Once again, this is a formulary expression, meant to prevent future legal suits if the seller should later decide that he is not satisfied with the transaction. It does not intend to provide a charter for anybody to cheat, nor does it necessarily relate to actual practice.[33]

Furthermore, the seller accepts his unambiguous obligation to provide legal liability, called *żamān-i darak*, in case a third party should later on raise any claims to the sold object. In most deeds of the Qajar period, this declaration is given partly in Arabic, following the model *ʿinda al-khurūj al-mabīʿ mustaḥaqqan li-l-ghayr*, but the expressions employed are often fragmentary.[34] We can understand the underlying concept much better if we look at the rare instances where this condition is spelled out in detail: *va żamān-i darak-i sharʿī ba naḥvī ast kih hargāh … aḥadī az vurrāṯ va ghayr vurrāṯ dar khuṣūṣ-i qaryatayn ẓāhir gardad bar bāyiʿ ast kih az ʿuhdah-i gharāmat dar-āyad,* "legal liability is defined thus that whenever anybody, whether one of the other heirs or somebody else, appears with claims on the villages, it is up to the seller to fulfil his obligation to provide compensation."[35] The party selling would then be obliged to return the price paid and, if necessary, even provide further redress. This clause is meant to protect the buyer in case the object sold was originally not in the exclusive possession of the seller or in cases where ownership was contested, for example, in the case of inherited estates.

Table 2.3 Text edition, third part, of the model deed of sale from 1186/1772

Legal clauses and conclusion	
Confirmation of effected transfer	
which was taken with his legal acknowledgement, and the honourable Vakil, as the aforementioned customer bought the whole recorded object for the price agreed upon as contracted.	موصوف مأخوذ باعترافه الشرعی و بخرید وکیل عالیشان مشتری مشار الیه تمامی مبیع مرقومهرا بثمن منعوت فیه و معقود علیه
Contract put into force	
Between them a sharīʿa-conform, correct contract of sale and agreement of Islamic denomination according to the obligatory revealed Law took place and became effective.	و بینهما عقد مبایعه صحیحه شرعیه و معاقده ملیه اسلامیه موافق قانون شرع مطاع واقع و جاری شد
Exclusion of annulment (faskh)	
The aforementioned seller has knowingly and consciously dropped and released all legal claims with regard to options of annulment of sale, such as legal action because of fraud – and be it of the highest decree.	و بایع مزبور دانسته و فهمیده تمامی دعاوی موجبه خیارات فسخ بیع سیما دعوی غبنرا و لو کان فی اعلامراتبهرا اسقاط و ابراء نمود
Guarantee of liability (darak)	
Concerning the guarantee of legal liability – in case other claimants to the sold property arise, whether whole or in parts, on whom the Lawgiver made it incumbent, liability rests with the aforementioned seller, according to Islamic liability conventions.	و ضمانه درک شرعی آن عند خروج المبیع مستحقاً للغیر کلاً او بعضاً علی من اوجبه الشارع بعهده بایع مزبور است ضماناً اسلامیاً
Affirmation of new ownership	
Now, in consequence of this legal and correct contract of sale, the whole aforementioned object became the exclusive property of the aforementioned eminent buyer. He shall use it in every way he wants, such as owners' exercise rights on their properties and those holding rightful actual control over their possessions.	اکنون بموجب این مبایعه صحیحه شرعیه گردید تمامی مبیع مزبور ملک مال خاص خالص عالیشان مشتری مشار الیه بهر نحوی که خود ... نماید کتصرف الملاک فی املاکهم و ذوی الاید و الحقوق فی ایدهم
Date	
This took effect on the 24th Rajab 1186.	و جری ذلک فی ۲۴ شهر رجب المرجب ۱۱۸۶

AFFIRMATION OF NEW OWNERSHIP

Formulas affirming the unlimited ownership rights of the buyer – the practical outcome of the successfully implemented sale – can be found at the end of the deed's legal section. The new owner's property is defined as *māl-i khāṣṣ-i khāliṣ* or *milk-i ṭalaq*, and his rights are often defined in Arabic as *ka-taṣarruf al-mullāk fī amlākihim* ("as the free disposal of owners in their property"). These passages are plain and unproblematic, but it is interesting to note that the reluctance to include such expressions as noted by Wakin, was not headed anymore in our time.[36] Among the legal clauses that are completely absent in our period are statements concerning the "inspection" (*ruʾya*) of the object.[37]

The above is a very rough sketch of the major components of legal clauses, but once again it should be borne in mind that every contract was shaped and drafted individually and while some parts could be dropped completely, others would also be executed in much more detail. Although we can discern clear preferences in the usage of one particular judge/notary or in documents written in one region at a certain time, the final draft was always decided upon by the individual who wrote the deed and who was able to chose from a wide variety of model drafts.[38]

In the legal clauses even more than in other parts of the contract, there is a clear tendency in the Qajar period towards a certain Arabicisation of the deed and an increasing avoidance of plain Persian wordings. Often, whole sentences are inserted in Arabic which, quite interestingly, contrasts clearly with early deeds from the Safavid period that attempt much more frequently to "translate" legal concepts into Persian. Thus the style of Qajar private deeds evokes much more the impression of being classical and conservative – probably a deliberate and intended effect. Although this more frequent usage of Arabic does not necessarily indicate a higher level of Arabic literacy, as can be gleaned easily from the frequent mistakes made in the process of inserting certain phrases or keywords. It might be also interpreted as a certain attempt from the side of the expanding clerical judicial system to affirm its exclusive access to legal knowledge and to differentiate itself from a "secular" Persianate society.

From the above, one could easily infer that for practical reasons, it would be most convenient to skip over the legal part of a deed completely and concentrate only on the factual contents. While this is justified in the vast majority of cases, in some cases however, we might still encounter additional stipulations or a secondary contract after the legal clauses of the first one. In practice, it is therefore most advisable to quickly scan the legal section for the mentioned major keywords – unless something unexpected pops up, one can be sure that one did not miss anything.

Conclusion and date

There is no universal expression to close a contract of sale similar to formulas such as *bar ʿuhdah shināsand,* "they shall consider it their responsibility," in

chancellery decrees. There are equally no final signatures or invocations, such as *khutima bi-l-khayr*, at the end of Qajar deeds. In most cases, the final segment of the employed legal clauses, whether affirming the new rights of ownership or simply validating the correct form of the transaction, would lead straight to the date. In deeds where the legal clauses are carefully executed, one can sometimes find an internal break (in our model contract: *aknūn*) that would start a new paragraph and thus connect a final passage with the concluding date.

The date is introduced either with the form common in decrees as *taḥrīran fī*, or with other expressions such as *kāna dhalika fī*, or a straight *ba tārīkh-i* … What distinguishes private deeds most markedly from decrees is that in almost all cases not just month and year, but also the exact day of the transaction is included – a clear necessity in case of later disputes. Note especially that in some cases secondary endorsements might display dates different from the main date, which is a clear sign that the deed was sometimes taken to other judges for a separate acknowledgement which might have taken several days or even weeks.

In deeds from roughly the late sixteenth century onwards, the year is usually given in numerals. A complete spelled out version of the year in Arabic is in our period only used for ornamental reasons, prior to the numeric date. The long, wave-like drawn *sana* functions as a "carrier" for the numeric year and closes the deed graphically.

Margins

Analysing the graphic layout of private deeds, we noted already the wide variety of "floating objects" to be encountered in the margins on the top and the right side. In most editions from Iran, endorsements and witness remarks, as the judicial means of attesting the validity of a deed, are summarised under the heading of *sijillāt*.[39] It is now time to examine these objects in more detail and add some remarks on the procedure of validating deeds of sale in our period.

Endorsements

The most prominent written element outside the main text is in most deeds the judge's or notary's endorsement. It is always positioned on top of the deed, usually oriented towards the top left corner. We will discuss further questions related to the position and nature of judicial endorsements separately in issues beyond ancillary diplomatic analysis, and therefore concentrate at this point mainly on the formulas employed, their immediate content and their significance for the validity and authenticity of the deed.

Contracts were concluded in the presence of a judge or notary who would have drawn up the formulary of the deed, supervised the proceedings and endorsed the final deed with an attesting remark that gave the contract legal validity. I use the rather vague term of judge/notary since, in the Qajar period, all independent and certified members of the ulama, i.e. those who had acquired a

Table 2.4 Text edition, fourth part, of the model deed of sale from 1186/1772

Margins	
Invocation	
He alone is the owner	هو المالک
Endorsement	
He – In the Name of God, the best of Names. The well-known seller, acting out of his own will, acknowledged and recognised what is written in it concerning the legal deed of sale, it took place before me, written by the judge: Seals by the *shaikh al-islām* ʿAta'ullah al-Husaini and the *qāżī* Muhammad Taqi al-Hasani al-Husaini	**هو هو** بسم الله خیر الاسماء البایع الطایع المعروف اقر و اعترف بما زبر فیه من المبایعة الشرعیة لدی حرره الداعی: «المتوکل علی الله الغنی عبده عطاءالله الحسینی» «عبده محمد تقی الحسنی الحسینی»
Witnesses	
Witnesses: The refuge of sayyiddom and nobility Mir Mahdi b. Mir Muhammad Rahim Khiyabani	شهـــــــــــــــود: سیادت و نجابت پناه میر مهدی ولد میر محمدرحیم خیابانی

relevant *ijāza* or gained approval inside their communities, participated in the promulgation of legal deeds. This professional activity was not restricted anymore to those carrying official positions or titles, such as qadi or shaykh al-islam, nor was it necessary to have been widely acknowledged as a mujtahid.

Prospective clients were free to seek legal services wherever they wanted, and they chose those members of the ulama whom they trusted or with whom cooperation had proved agreeable in the past. To a certain degree, the prominence of a leading member of the ulama would also confer some prestige on the deeds he signed. In particular, his seals would have been known and acknowledged beyond regional boundaries – a precondition for the conclusion of more wide ranging transactions. While the actual function of the endorsing clerical jurist was that of a notary, many of them would also have acted as judges in a more narrow sense, passing verdicts, arbitrating disputes, and issuing legal opinions. From the form of their attestations alone, it is impossible to deduct their professional status or to decide whether they carried any relevant official title or position.[40]

For almost all bilateral contracts, a judge's endorsement was indispensable to guarantee the validity of a transaction. Witnesses alone were not considered sufficient, and even more, their testimony could actually be dispensed with completely if necessary. This already deviates considerably from earlier practices and other regions of the Islamic world and reflects clearly the quite distinct structure and organisation of the Shiite Iranian legal system of the Qajar period.

Many contracts carry not only one endorsement, but two or even more, given by different ulama – or alternatively one central endorsement remark sealed jointly by different judges. Quite often the deeds allow us to recognise that "courts" were run as family businesses, with both father and son sealing at the same time. They also show which ulama worked together on a daily basis, and hint at existing relations of employment or apprenticeship. In our example – and we have to be aware that our deed was written in the Zand period when clerical offices still carried considerable weight – the document displays only one central endorsement remark, sealed jointly and apparently on an equal footage by the qadi and the shaykh al-islam of Tabriz.

The wording of the endorsement is invariably given in Arabic; we never find a Persian endorsement or even inserted Persian fragments. Contrary to the Arabic passages found in the main text, the endorsement is usually free of grammatical errors and syntactically correct. This might suggest that the main text was often written by an employed secretary or scribe, who would simply copy available model contracts, while the endorsement was written by the issuing judge himself and added later on.

With the endorsing remark the judge attests the seller's acknowledgement (*iqrār*) of the contents of the contract and thus validates the transaction. The basic formula employed is of the kind "the seller acknowledges what has been written down as a legal contract of sale." The actual wording might differ and instead of the unambiguous *aqarra*, we can also find expressions that simply state that the transaction has taken place, such as *qad waqaʿa al-bayʿ,* then echoing the legal clauses of the main text.

More ornate constructions, such as the one in Figure 2.4, would also mention the major legal components of the deed concerning the transfer of price and

Figure 2.4 Endorsement from a deed of sale dated 1255/1840

object, the barring of annulment and the guarantee of liability. The highly stylised endorsement reads:

> *qad aqarra wa iʿtarafa al-bāyiʿ al-ṭāyiʿ al-mājid sallamahu allāh taʿālā bimā zubira wa ruqima wa suṭira fī al-matn min al-mubāyaʿa al-lāzima al-jāzima al-ṣaḥīḥa al-sharʿīya wa al-iqbāḍ wa al-isqāṭ wa akhdh al-thaman tāmman kamalan ladaiya ḥarrarahu al-dāʿī*
>
> ("The voluntarily acting, exalted seller – God bless him – acknowledged and recognised what has been written, noted and recorded in the main text, concerning the sharia-conform, correct, legally binding and obligatory contract of sale, acceptance, waiving of claims, and the taking of the price, fully and completely, …").[41]

The judge himself makes his appearance only in the final preposition *ladaya* – "(the seller acknowledged …) in my presence," or "it took place before me," before the optional statement of authorship "this has been written by the *dāʿī*." As the standard self-appellation for ulama in the formulary context of private deeds *dāʿī* stands for expressions such as *al-dāʿī li-dawām al-dawla al-qāhira* or *al-dāʿī li-ubūd al-salṭana*, referring to those praying for the continuity of rule.[42] The actual name of the judge never appears in addition to the seal, nor is his title or function mentioned at all.

While we can encounter references to the legal acknowledgement of the seller in various places of the main text of our documents, it is clearly not a central or obligatory element of the formulary. This contrasts with earlier Central-Asian deeds of sale, where the formal declaration of the seller's acknowledgement follows immediately after the initial date of the transaction as part of the opening section of the formulary.[43] In our deeds the formal *iqrār* has been transferred from the main text into the top endorsement where it is now reiterated by the attesting notary judge.

Secondary endorsements, if they exist, are usually shorter and limit their statement often to a mere *aqarra bi-mā fīhi*. Sometimes the different stages of the transaction are taken up in separate endorsements: a second attestation sealed by the same judge as the central endorsement would i.e. only confirm the completed transfer of payment. Only in elaborate deeds, or in those that deal with contested property and are thus perhaps in need of a higher amount of judicial validation, can we find several, independently written endorsements of equal length.

Witnesses

In some cases, the borderline between what constitutes a secondary or tertiary endorsement and what should be considered as a witness remark becomes blurred. Crucial in the decision whether one should identify a remark as

testimony or as endorsement is the precise wording. As long as emphasis is placed on the seller acknowledging the contract, or on the successful completion of the transaction, it should be considered a judicial attestation.

Testimonies by witnesses, on the other hand, typically contain a form of the root *shahada.* The most common expression is *shahada bi-mā fīhi* ("he testified on the contents"), but there are many variants, such as *ana min al-shāhidīn* ("I am one of the witnesses …"), or a parallel Persian wording such as *gavāhī dādam* ("I testified"); the use of Arabic testifying remarks, though widespread, was not obligatory. Another alternative, such as employed in our model deed, is to draw a long line with the heading *shuhūd*, where witnesses would simply place their seals.

Another crucial element in the decision whether we deal with an endorsement or a testifying remark is its location on the document. In general, testimonies are recorded exclusively on the right-hand margin, while remarks made by members of the ulama rarely move below the top margin.

We already stated above that the central endorsement made by the judge is the decisive means of validating the contract, while the testimony of witnesses was considered only secondary. We therefore also look in vain for a distinct reference to witnesses in the main text, such as the obligatory closing formula of *bi-maḥḍar min al-ʿudūl wa al-thiqāt* ("in the presence of righteous and trustworthy witnesses") in Central Asian deeds.

If seen from a functional perspective, secondary or tertiary endorsements would often assume the role of independent testimonies, with the difference that they are provided by jurists, rather than laymen. Since witnesses are rarely introduced with their profession or title, it is difficult to decide in which way they were related to the transaction. In some instances they are clearly concerned by the transaction, for example as neighbours or as *kadkhudās* of a village or an urban quarter. In other instances it is probably safe to assume the witnesses to have been part of the promulgating judge's retinue, although nothing hints at the existence of "professional witnesses."

OTHER STATEMENTS MADE IN THE MARGINS

In addition to endorsements and testimonies proper, we can encounter various other objects in the margins. If a *basmala* or any other kind of invocation appropriate to a contract of sale, such as *huwa al-mālik bi-l-istiḥqāq*, was neither part of the central endorsement nor introducing the main text, it can be found in the middle of the top margin.

Since no court registers existed where all proceedings and concluded contracts were recorded, deeds were usually issued in several copies, of which one usually remained in the private registry of the issuing judge and his family. Thus a plaintiff could always claim a re-issue of a deed lost or considered not genuine. At times, the number of copies was noted explicitly in the margins, such as in Figure 2.5, with the expression *iktāb ʿalā thalatha nusakh* ("written in three copies").[44]

A characteristic that is obviously copied from the usage of royal chanceries is the use of what in Latin terminology is called an *elevatio*, the elevated mention of a royal or princely figure's name outside the main text, accompanied by a blessing. In eighteenth and nineteenth century private deeds the use of an elevatio was not restricted to the ruler or immediate members of his household, but was also considered a privilege of other high-ranking dignitaries. Thus transactions involving Hajj Mirza Aqasi, the tutor and later prime minister of Muhammad Shah, always feature his elevated name outside the main text, as do deeds involving the crown prince ʿAbbas Mirza. This is also true for many semi-autonomous tribal leaders of the eighteenth century, such as ʿAli Naqi Khan Bigdili.[45]

The growing competition between a modernising state bureaucracy that extended its reach into more and more areas of society and a Shiite judiciary that had become highly assertive towards the late nineteenth century, also made itself felt in the field of civil legal affairs. Increasingly, state authorities interfered in legal disputes over ownership; with the "law on the registration of deeds" issued by Nasir al-Din Shah in 1303q (1886) an attempt was also made to put the lucrative and important field of private legal affairs under government control. However, the idea that from now on all documents, even those issued from sharia courts, should be registered in governmental offices and should carry an official seal and stamp turned out impossible to enforce. The statement made by Qa'im-maqami that from the period of Nasir al-Din Shah onwards all private deeds after their affirmation through witnesses had to carry the seal of the "Divānkhāna-yi mubāraka-yi dawlat-i Īrān," and later on that of the "Vizārat-i ʿadliya" is not confirmed by the vast majority of deeds far into the fourteenth century *hijrī*.[46] The process of implementing government control was a very slow process, even more so in the provinces. If people actively sought an attestation of their deeds by governmental offices, they would usually have been already involved in

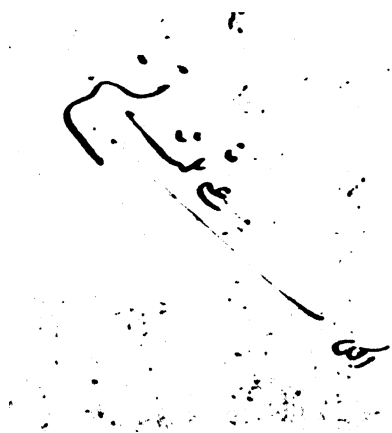


Figure 2.5 Remark on the number of issued copies

ongoing lawsuits and a registration would have been part of an attempt to enlist the support of state authorities through petitions.

Finally, the margins offer the place to record any kind of later additions or separate stipulations. This could include separate acknowledgements (*iqrār*) made by other heirs or relatives of the seller that they agree with the sale, recorded to avoid later claims or disputes. Or we can find special stipulations on the mode of payment that were not included in the main text. Sometimes the sale transaction was reverted or re-directed shortly after, and instead of drawing up a new deed, the new contract was just written down in the margins of the old one. In many instances we deal not with original versions of a deed, but with later effected transcripts. Then, a declaration that the copy is identical with the original (*savād muṭābiq al-aṣl*) would be placed in a prominent position.

Issues beyond ancillary diplomatic analysis

Moving beyond a descriptive analysis that serves primarily ancillary aims, we must identify representative characteristics of Qajar deeds of sale and find out how they differ from deeds composed in earlier periods or other Persian-speaking regions. Furthermore, we must see how diplomatic results thus gained can relate to wider changes in society and how the study of formal aspects can furnish specific and exclusive arguments on more general historical questions. I want to focus on two such themes, one dealing with the metamorphosis in the self-conception of religious judicial authority, the other with the possible reasons behind the gradual disappearance of the "classical" deed of sale towards the end of the thirteenth century hijri in Iran.

The metamorphosis of religious judicial authority

If we place a typical deed from the late Qajar period side by side with a randomly selected Persian deed of sale written in the early sixteenth century, their outward appearance is markedly different (see Figure 2.6).[47] Whereas the Qajar document displays the earlier analysed graphic division between text block and margins, with numerous remarks on top and a huge number of seals scattered on the right side, the early deed is much more plain; the top is empty apart from a simple invocation, seals are still a rarity, and instead, we find numerous names and signatures crouched at the bottom, below the main text of the deed. While the formularies of the main text display a striking similarity, it is much more difficult to detect the judge's attestation at the bottom. Far from the elaborate endorsement of Qajar deeds, it is limited to a mere statement of authorship, familiar to us from the standard closing expression of Qajar endorsements: *ḥarrarahu al-ʿabd al-faqīr Fakhr al-Dīn* ("this has been written by the humble Fakhr al-Dīn").

In short, in this deed from 920/1514 the judge's remark and all testimonies are located at the bottom of the document, which is considered an obvious taboo

area in a Qajar deed. The most prominent part of a nineteenth century deed, quite to the contrary, is the central endorsement made by the issuing judge, located high above the document. The question arises as to how the judge's remark and seal moved to the top, displaying such visible dominance and authority.

I must confess, however, that the direct comparison of these two deeds is partly misleading. While it is true that a majority of deeds from the ninth and early tenth century hijri, especially those written in Persian, were of the simple type shown in Figure 2.6, quite a number of documents exist that are much more elaborate and that do actually display remarks above the main text.[48] If we go back in time, we see that this alternative is not restricted to a transitional period between the fifteenth and sixteenth centuries, but represents a valid choice that existed already for pre-Mongol deeds. At this early time, however, only a few deeds included a proper legalising remark by the issuing judge, that – as in our Qajar deeds – was located usually on the top left above the main text. Many other deeds would simply do with the testimonies of the witnesses and a concluding scribal remark (i.e. *ḥarrarahu, katabahu*) by the judge, notary, or court clerk, as in our example.[49] The conclusion that these more simple deeds were issued by "notaries" and not by proper judges, thus allowing a distinction between "notary deeds" and "judge deeds," proves however to be not generally

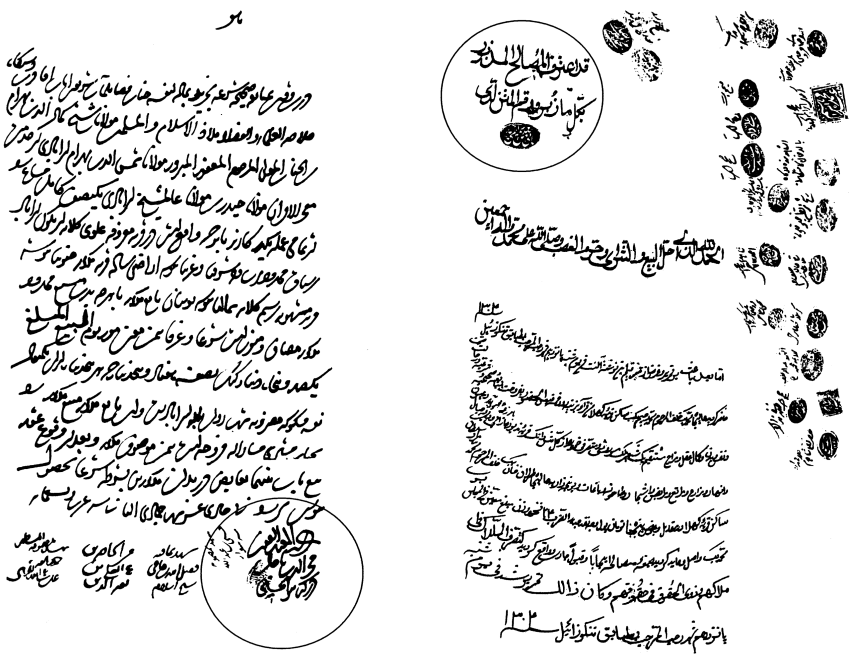


Figure 2.6 Outward appearance of an early Safavid and a late Qajar deed of sale. The remarks are highlighted

valid since many "simple deeds" were written nevertheless by a qadi, as can be gleaned from scribal remarks.[50]

Our initial question must consequently be modified. Instead of asking how the endorsement moved to the top, the point seems rather to be when and why a central top endorsement became obligatory for most private deeds. And once it became obligatory, when did it take up its present formulary wording and what other changes accompanied it?

A precise answer is difficult, because of the very meagre documentation on deeds from the fifteenth and sixteenth centuries. Few documents survived, and those that did, tend to reflect local usage and thus might not always be indicative for general trends. Furthermore, we are not dealing with a centralised chancellery, where only a handful of people were employed at the same time and where changes of style and formulary can often be pinned down to precise dates, such as the ascent of new rulers or dynasties. Since we are dealing with the promulgation of private deeds that involved many individual jurists who were not bound to observe any central ordinances, change never occurred suddenly. Innovations were accepted and implemented only over several generations, and there is always an extended period of transition, where different styles were able to coexist peacefully.

A closer look at available deeds from the sixteenth century shows that the process that made a central endorsement obligatory for almost all private documents went hand in hand with a new understanding of the judge's attesting remarks. The top legalising remarks from the pre-Mongol period up to the early sixteenth century follow the type *saḥḥa/thabata ʿindī maḍmūnuhu* ("the deed's contents were correct/established before me"), and would at times include a direct statement by the judge of having passed his judgment on the correctness of the transaction (i.e. *ḥakamtu*).[51] The new type from the late sixteenth century onwards is of the kind we described above in our detailed analysis of Qajar deeds. It drops expressions referring to a judge's verdict completely and instead testifies either to the seller's acknowledgement (*qad aqarra al-bāyiʿ*) or to the successful implementation of the transaction (*qad waqaʿa al-mubāyaʿa*).

The other aspect of this process involves a complete overhaul of the outer appearance of private deeds. This means a new spatial organisation that gives priority to the top, while eliminating the bottom area below the main text, and moving the testimonials of witnesses to the right margin. This, in connection with the graphic demarcations discussed at the beginning, such as an emphasis of the first line or the left indent after the date, would give documents a definitely "new" look.

The earliest specimens featuring the new endorsement type would still stick to single aspects of the older layout: thus the bottom part of a deed would still contain witness remarks and was not yet perceived as a no-write-area. Equally, secondary endorsements or scribal remarks might be found in the right-side margin or below the text.[52] Other deeds from the late sixteenth century might

already have adopted the new layout completely and thus look like typical Qajar deeds with the endorsement on the top left side, the witnesses' remarks neatly arranged on the right margin, and the first top line of the main text emphasised – but they would still contain older textual elements in their endorsements.[53]

This transitional period is concluded only at the beginning of the seventeenth century, when almost all deeds implement the refurbished layout and feature one or more of the new obligatory top endorsements.[54] The distinction between "simple deeds" with testimonials at the bottom and a simple scribal attestation, and "prominent deeds" featuring a judge's legalising remark on top was now a concept of the past.

The transformation in the appearance of private documents should be seen in connection with the change of the main or dominant language of private deeds from Arabic to Persian. While this shift in language was a gradual development that had began much earlier in pre-Mongol times, it was far from being generally accepted by the end of the ninth/fifteenth century.[55] The concluded language shift in private deeds can thus be regarded as a pre-condition for the other transformations described above, and as a process that in its final stage would have run parallel to the re-definition of private deeds. The same is true for the replacement of "signatures" (usually just the recorded names of witnesses) by seals – or rather the evolution of a culture in which nearly everybody of a certain standing, not just the judge and high dignitaries, would have employed a private seal.

It is tempting to locate a sudden change in the formulary of private deeds within the first years after the establishment of the Safavid dynasty and the introduction of Twelver-Shiism as the new official state religion. However, such an argument would have to be presented with care. First, as stated earlier, the judicial system was not centralised and no institution existed that could ordain new formularies or layouts within a couple of years. Second, there is nothing discernibly Shiite in the changes we observed – at least to my knowledge – and the textual elements of the main text, where we would expect considerable change after the introduction of a different legal school, remain conspicuously unaltered. In fact, the changes observed cover a time span close to a century, and they should be seen in the context of other long-term social developments occurring during the first half of Safavid rule. Still, the above development is without doubt a Safavid phenomenon that, similar to other social and religious processes of the sixteenth century, is completed during the reign of Shah ʿAbbas I.

Relying exclusively on the testimony provided by changes in the appearance and formularies of private deeds, we might draw further conclusions. While the composition of the 'ulama as a social group remained rather constant after the introduction of Shiism, a fact mirrored in the conservative treatment of the textual level of deeds that continued to be transmitted inside the clerical "estates," their self-perception as independent jurists obviously changed dramatically.

Moreover, it is exactly at this point where the identified transformations become significant. Up to the sixteenth century, clerical jurists in Iran appear to have willingly accepted the acquiescent position of officials who would simply record transactions and then place their name at the bottom, together with the other witnesses. Now, the ulama literally claim new territory: their attestations become the most prominent part of almost every deed, with their seals and endorsements positioned high above the main text. Instead of legalising only selected deeds, they now testify actively to the successful implementation of every single legal transaction. One might be hesitant to press the interpretation too far, but this change suggests that as soon as the new concept of the independent Usuli-mujtahid gained ground in the religious discourse of Safavid Iran, there must have been a growing desire among the ulama to redefine their role in the judicial system. With the new layout of private deeds that revolves around the judge's now obligatory endorsement, they signalled their new authority to the outside, in a design that at times evokes associations with a ruler's *tughrā* or seal on the top of a royal decree – a similarity that was probably not completely accidental.

The displacement of the classical **mubāyaʿah** *by the universal* **muṣālaḥah**

While we were discussing the legal type of a *mubāyaʿah* contract of sale with regard to both its function as a prototype for most Qajar private deeds and its simplicity in structure and content, a closer look into both published and archival collections quickly reveals that the further we move into the nineteenth century, the rarer our chances are to encounter a straight and self-declared *mubāyaʿah*. This does not mean of course that fewer sales took place or that transactions were not recorded anymore on a regular basis. Quite to the contrary, it seems that while more and more paper was used to record sales, this was increasingly done in a different legal form: that of a *muṣālaḥah*, a contract of settlement or composition.[56]

The documents edited in the collection by Safinezhad/Krüger under the title "Erwerb von Boden" ("purchase of land") are, for example, all contracts of sale of the *muṣalaḥah*-type. In fact, one wonders what the difference to a "normal" contract of sale is, since the only difference to our model formulary is the absence of the clear statement "*bifurūkht*" ("he/she sold"). Instead, we find a sequence such as *muṣālaḥa namūd* X *bā* Y *hamagī va tamāmī* [object] *ba māl al-muṣālaḥa* [amount], resulting in an obvious sale.[57] That towards the end of the nineteenth century the *muṣālaḥa* had become the dominant way to record a sale is also confirmed by Beck, who in his selection of model contracts presents a "Grundstücksvertrag nach muslimischem Recht," under the Persian heading "*Qabāla-nāmchah-i sharʿī*" which is a *muṣālaḥah,* and not a *mubāyaʿah.*[58]

The conclusion of contracts based on the legal concept of settlement (*ṣulḥ*) is of course not an invention of the late Qajar period, and we can find early *muṣalaḥah*-contracts already in the Safavid period. The difference between these

early deeds and the late Qajar practice is not only the frequency of their appearance – *muṣālaḥah*-contracts are quite rare before the early nineteenth century – but especially that most of the early *muṣālaḥas* provide a clear reason for the conclusion of a legal settlement which even if not stated explicitly, is easily deductible from the presented circumstances. Thus, there could have been extended inheritance disputes making litigation necessary, or acknowledged claims and rights would have been ceded for a compensation payment.[59]

In most late Qajar *muṣālaḥah* contracts this is not the case anymore, and the legal form of a settlement turns into a universal format that is able to accommodate a wide variety of legal transactions. This is not the place for a conclusive discussion on the possible variants of a *muṣālaḥah* and the resulting legal implications, but apart from a marriage contract, a *muṣālaḥa* could replace almost every other contractual agreement, such as sale, rent, loan, hire, or any combined arrangements.[60]

The collection of documents edited by Sutudeh/Zabih is the only one that distinguishes stringently between the two types of *muṣālaḥah* and *mubāyaʿah*, whereas all other editors treat them as interchangeable expressions of a sale transaction. This is not completely unfounded, since the difference between the two options increasingly lies merely in the self-appellation provided inside the deed, while the employed formulary is almost identical. In some cases even this simple means of differentiation becomes obsolete, once the main text mentions *bifurūkht* as the mode of transaction and introduces the seller as *bāyiʿ*, while the endorsements refer to the contract as *ṣulḥ*, and the participating parties as *muṣāliḥ*.[61] Such occurrences in particular hint at the increased vagueness of legal terminology.

Reasons for this development have to remain speculative, prior to a more systematic attempt to analyse this phenomenon, but can be found probably in the fact that a *muṣālaḥa* allowed more flexibility than other, "stricter" contracts. In some cases, its binding force might have been less rigorous and allowed more options for later cancellations or annulments, although this is not reflected in the formulary itself that usually contains legal clauses identical with those of a standard contract of sale.[62]

In practice, a *muṣālaḥah* requires more attention with regard to details, since the first task is to find out what kind of contract is actually emulated (*bayʿ*, *ijārah*, or a combination of both,) or whether one deals with a "real" settlement. Furthermore, *muṣālaḥa* contracts are less predictable than ordinary contracts of sale or rent, and may contain changes in formulary, as well as additional stipulations and clauses.

Beyond practical concerns, however, it is of high significance that private deeds underwent yet another major transformation in the last decades of their existence under *sharʿī* legal control. It appears as if the opening of formulary constraints, at a point when the ulama had to protect one of their most vital domains against infringement by state authorities, was a deliberate move – or at least a clear response to changing social conditions.

Conclusion

If we are to name the most prominent characteristic of Qajar private deeds, it would be the ongoing Arabo-Persian bilingualism that is not restricted to an opposition between Arabic endorsements versus Persian main text, but can be found in almost all sections of the deed. A trend displayed in some documents from the fifteenth century that tried to replace as much Arabic with Persian as possible did not turn out victorious. To the contrary, Qajar deeds show a much more legalistic and formulary approach than some deeds written some centuries earlier. It is consequently also not astonishing that formularies are highly developed and sophisticated, and the separation from developments in Central Asian private deeds remains valid. In some details, such as the introduction of individuals and their names, we can identify a clear parallelism with developments in royal and princely chanceries – a field that deserves separate attention, as do formal aspects of other documents that we were unable to incorporate adequately at this point, such as waqf-deeds, marriage contracts, testaments, and judicial verdicts (*aḥkām*).

Despite the fundamental transformations outlined in Issues beyond ancillary diplomatic analysis, Qajar private documents display an astonishing continuity in many aspects of their textual formulary, especially if compared directly with the earliest available specimens from the pre-Mongol period. It is particularly remarkable that this noticeable continuity must not just simply be seen with regard to Persian as the deeds' dominating, though never exclusive, language, but rather as a specific inner-Iranian phenomenon. As such, it actually transcends the long-term shift of the main language of private documents from Arabic to Persian that occurred between the twelfth and the fifteenth centuries. This continuity is clearly an expression of the transfer of traditions through local schools of Iranian ulama that deviates from an early stage on from developments in other Persianate cultures of Central Asia.

Consequently, the conversion from Sunni, mainly Shafii and Hanafi legal usage, to Twelver-Shiʿism and Jaʿfarite legal concepts ordained by the Safavids, which one might assume to have been a major impact on all aspects of applied Islamic Law, is not perceivable as a sudden turn in the textual composition of private deeds. If one looks for an independent proof for the premise that Sunni clerical estates managed to maintain their influence and to contribute their professional expertise alongside their conversion to Shiʿism, the close examination of private deeds furnishes a strong argument in this respect.

Continuity should however not be confused with the idea of stagnation or a static concept of private legal deeds. Certainly, this is a conservative field, and contrary to dynastic change that prompted chancelleries to devise new concepts, iconographies and linguistic innovation to emphasise a different understanding of legitimacy or ideological representation, ulama were neither in need, nor capable to implement hurried changes. Transformations occurred slower and over a longer period, which makes them so much more difficult to spot and locate.

Thus the Safavid turn did not cause a sudden change in how deeds were written, but initiated a radical new definition of the outer appearance and the layout of private deeds that highlighted successfully the new role and re-defined self-perception of the ulama in Iranian society. This new role is particularly expressed in the new judicial practice that made a central endorsement on top of every deed obligatory and therefore enhanced their independent authority in civil legal affairs considerably. Completed roughly during the reign of ʿAbbas I, this transformation corresponds to other social and religious developments that occurred at the beginning of the seventeenth century.

The other major turn in the legal practice and composition of private deeds we identified is the increasing preference for the universal contractual model of *ṣulḥ/muṣālaḥah* during the later decades of Qajar rule that began to replace distinct contracts and blurred hitherto strictly separate legal categories. As a preliminary hypothesis I would suggest to regard this trend both as an indirect response to the growing claims of the state to interfere in the sphere of civil legal affairs and as the result of the multiplication and wide spread of ulama authority that destroyed the rigid control of local schools and traditions and thus furthered the dissolution of uniform formularies.

Notes

1 Among the collections used in the present contribution, Masīḥ Ẕabīḥī and Manūchihr Sutūdah, *Az Āstārā tā Istārbād: Asnād-i Tārīkhī-yi Gurgān*, vols. 6–7, (Tehran: Anjuman-i Asar-i Milli, 1354/1975), are the most strict in their distinction on legal and formal grounds (i.e. separate listings of *hibah-nāmah* and *istishhādnāmchah*). Ghulām Ḥusayn Bīgdilī, *Tārīkh-i Bīgdilī: Madārik va Asnād* (Tehran: Bu ʿAli, 1367/1988), exemplifies best a middle ground between thematic organisation (i.e. *asnād-i amlāk*) and differentiation between document types (i.e. *vaqfnāmah* and *ʿahdnāmah*).

2 This differentiation becomes problematic as soon as the "state" (i.e. the ruler, members of the aristocracy, governors, or high officials) takes an active part in a contractual agreement: for example in the case of a ruler establishing a pious foundation using the outward form of a royal decree. Equally, the borderline between "state-administrative" institutions and civic judicial entities is drawn differently in various epochs and might sometimes be blurred. A third problematical area concerns all forms of correspondence – whether issued by chancelleries or individuals from the administration or the judiciary – which do not necessarily follow strict formularies, but nevertheless have very concrete legal effects. Compare also Monika Gronke, "La rédaction des actes privés dans le monde musulman médiéval: théorie et pratique," *Studia Islamica* 59 (1984): 160, and Rudolf Veselý, "Die Hauptprobleme der Diplomatik arabischer Privaturkunden aus dem spätmittelalterlichen Ägypten," *Archiv Orientální* 40 (1972): 318–20.

3 Josef Schacht, *An Introduction to Islamic Law*, 2nd edn (Oxford: Oxford University Press, 1964), 151–52.

4 The establishment of the Islamic Republic in Iran has not reversed this process. The new government has put clerics at the head of existing bureaucratic institutions, but never intended to pass the control over civil legal affairs back into the hands of individual ulama.

5 The origins of Iranian private deeds are treated in an exemplary manner in the introduction to Monika Gronke, *Arabische und persische Privaturkunden des 12. und 13. Jahrhunderts aus Ardabil (Aserbaidschan*) (Berlin: Klaus Schwarz, 1982), summarised as Monika Gronke, "Zur Diplomatik von Kaufverträgen des 12. und 13. Jahrhunderts aus Ardabīl," *Der Islam* 59 (1982): 64–79 – needless to say that the present chapter is heavily indebted to these studies.

6 The document is stored in the "Iranian National Archives" (*Sāzmān-i Asnād-i Millī-yi Īrān*), under no. "29600056 Alif Aza" in the electronic catalogue. With reference to the existing microfilm formats, access to the originals is usually not granted; therefore, no concrete measurements and details of paper quality, ink, or remarks on the reverse can be provided. On the context of the deed, see Christoph Werner, *An Iranian Town in Transition: A Social and Economic History of the Elites of Tabriz* (Wiesbaden: Harrassowitz, 2000), 177–79. I avoided the use of further unpublished archival material, since wording and appearance are not easily verifiable, and relied for comparative references mainly on published collections of documents.

7 Once more, a note of care: one should be aware that important deeds probably stood out in paper quality, size, calligraphic design from the beginning, in turn resulting in a higher survival rate.

8 For a good introduction to various hands and typical ligatures, see William L. Hanaway, *Reading Nastaliq: Persian and Urdu hands from 1500 to the present* (Costa Mesa: Mazda, 1995); helpful for the novice are also the tables in Sebastian Beck, *Neupersische Konversationsgrammatik* (Heidelberg: Julius Groos, 1914), 438–39.

9 In fact, it would be highly naive to assume that a professional scribe was unable to estimate the space still required for the intended text. The sometimes suggested reason for pulling final words up as a means to prevent falsification is also not very convincing, since the irregular positioning of words at the end of lines makes it much easier to insert a word or two later on.

10 See for example Bīgdilī, *Madārik va Asnād*, 342, facsimile of document 96, dated 1279/1863.

11 This practice becomes increasingly rare in deeds from the second half of the nineteenth century.

12 Heribert Busse, *Untersuchungen zum islamischen Kanzleiwesen an Hand turkmenischer und sawidischer Urkunden* (Kairo: Sirovic, 1959). See the different approach by Jahāngīr Qāʾim-maqāmī, *Muqaddamaʾī bar ShināKht-i Asnād-i Tārīkhī*, (Tehran: Anjuman-i Asar-i Milli, 1350/1971).

13 Very elaborate private deeds might contain an ornate introduction alluding to the purpose of the document (*arenga*), and the distinction between *narratio* and *dispositio* is valid for court verdicts (*ḥukm/aḥkām*), which do however not follow strict formularies, as well as for more complicated settlement contracts. For a discussion of private deeds based on this tripartite division, see Gronke, *Privaturkunden*, 17f.

14 Document 12 (1174/1760) in Ẕabīḥī and Sutūdah, *Āstārā tā Istārbād*, 7:31–33, or document 91 (1317/1900) in Bīgdilī, *Madārik va asnād*, 222–23, facsimile 337.

15 One can draw a direct line from the invocation *huwa al-mālik* to the final concluding phrase that confirms the new owner with *ka-taṣarruf al-mullāk fī amlākihim* – the two occurrences of *mālik/mullāk* serve as brackets to hold the deed together.

16 For early specimens see the *iqrār-nāmah*s from 842/1438 and 844/1440 in Muḥammad Taqī Dānishpazhūh, "Asnād-i Āstānah-i Darvīsh Tāj al-Dīn Ḥasan Valī dar Niyāk-i Lārījān," *Nuskhahʾhā-yi Khaṭṭī* 4 (1344/1966): 481–648: 504f and 508f., both with *sabab-i taḥrīr-i īn kalimāt*, and the deed of sale from the same year 842 that still sets out with *īn ẕikrī ast*. See Urkunde 7 (603/1207) in Gronke, *Privaturkunden*, 192 for the earliest example of the Persian introduction with *īn ẕikrī ast*, which actually follows Arabic formularies.

17 A prime example is the sale of a garden that elaborates on the motif of paradise and celestial gardens, document edited as "Sale Varia 2" in Werner, *Iranian Town*, 346–54.
18 Susan E. Rayner, *The Theory of Contracts in Islamic Law: A Comparative Analysis with Particular Reference to the Modern Legislation in Kuwait, Bahrain and the United Arab Emirates* (London: Graham & Trotman, 1991), 107–8. Johannes Christian Wichard, *Zwischen Markt und Moschee: Wirtschaftliche Bedürfnisse und religiöse Anforderungen im frühen islamischen Vertragsrecht* (Paderborn: Schöningh, 1995), 110–15. Parviz Owsia, *Formation of Contract. A Comparative Study under English, French, Islamic and Iranian Law* (London: Graham & Trotman, 1994), 474–77.
19 Sometimes even more ornate as *maqrūn bah khayr va barakāt*, "blessed and favourable," as in Beck, *Konversationsgrammatik*, 461.
20 Gronke, *Privaturkunden*, 192, Urkunde 7 (603/1207) combines the date with the purpose declaration of *īn ẕikrī ast*. Examples for Central Asian sale-deeds Al'fred K. Arends (ed.), *Dokumenty k istorii agrarnykh otnoshenij v Bukharskom khanstve*, *1. Akty feodal'noj sobstvennosti na zemlyu XVII–XIXv.* (Tashkent: Akadamiya Nauk, 1954).
21 There are exceptions: some deeds mention the town, such as an early deed from 1123/1712 in Ẕabīḥī and Sutūdah, *Āstārā tā Istārbād*, 7:18 that mentions the venue as *maḥkamah-ʾi muḥakkamah-i qalʿah-i mubārakah-i dār al-muʾminīn-i Astarābād.* Also two late nineteenth century documents in Javad Safi-Nezhad and Eberhard Krüger, *Traditionelle iranische Landwirtschaft in Dokumenten, mit diplomatischen Untersuchungen von Christl Catanzaro*, (München: Two-step, 1995; also Tehran: Sahab 1376/1996), 6–7, 94–95, introduce it as *maḥżar-i masʿūd-i muḥtaram-i sharʿ-i muṭāʿ-i dār al-khilāfah-yi Ṭihrān*.
22 Examples from Bigdilī, *Madārik va Asnād*, 38, 45 *maḥżar-i anvar-i sharʿ-i muṭāʿ*, *majlis-i sharʿ-i muṭāʿ*
23 Beck, *Konversationsgrammatik*, 461, dated 1325/1907.
24 This is congruent with traditional legal ordinances, but contrary to earlier deeds where the active transaction is one of "buying" rather than one of "selling," Gronke, "Diplomatik," 70. Pre-Safavid deeds of the above-mentioned "*īn ẕikrī ast"*-type also start out with *bikharīd* as the central transaction, Dānishpazhūh, "Asnād-i Āstānah-i Darvīsh Tāj al-Dīn," 510f, dated 845/1441.
25 Other derivatives of the root BAʿ can also be found in this context, i.e. *ba-baiʿ-i bāt.*
26 More on this below in Issues beyond ancillary diplomatic analysis.
27 See Gronke, *Privaturkunden*, 50–52. As an integral part of the introduction in fifteenth-century deeds from Samarkand that begin with *dar* [date] *iqrār kard* [seller] *kih furūkhtah-am*, Olga D. Chekhovich, *Samarkandskie dokumenty XV–XVI vv., o vladenijakh khodji Aḥrāra v Srednej Azii i Afganistane*, (Moskva: Nauk, 1974), 51. Endorsements regularly contain clauses of acknowledgement, and sometimes additional *iqrārs* of third parties are noted in the margins, see below.
28 A deed contemporary to our model contract, dated 1194/1780, Bīgdilī, *Madārik va Asnād,* 32f.
29 Tabular arrangement of borders (although numbered, not with cardinal points) in document 13, Bīgdilī, *Madārik va Asnād*, 259.
30 Neither in archival material, nor in published collections of Qajar documents did I ever encounter a contract of sale on movable property as defined above.
31 Siyāq is a special system of writing numbers used in accountancy. The best introduction to the Qajar variant which is quite different from that used in the Ottoman Empire, India or Central Asia is Muḥammad Shīrvānī, "ʿIlm-i Siyāq," *Mīrāṯ-i Jāvīdān* 2–1 (1375/1996): 40–45.
32 Ẕabīḥī and Sutūdah, *Āstārā tā Istārbād*, 7:36, contract dated 1235/1820. Bīgdilī, *Madārik va Asnād*, 214, contract dated 1304/1887.

33 A special variant that appears to have been quite common in contracts of sale of the eighteenth century, is the inclusion of a fictive lawsuit because of fraud that resulted in a settlement (*ṣulḥ*) between the two parties. In exchange for an additional payment that amounted to a certain percentage (about 5 per cent) of the original price, the selling party revoked once and for all any further claims, see for example Ẓabīḥī and Sutūdah *Āstārā tā Istārbād*, 7:19, dated 1123/1712.

34 The Arabic formula is often shortened to a mere *ʿinda al-khurūj al-mabīʿ* or *mustaḥaqqan li-l-ghayr bar āmada*, expressions that do not make sense on their own. The wording used is almost identical to that of pre-Mongol Arabic deeds from Iran, where it appears as *iltazama ʿuhdat al-darak lau kharaja al-mabīʿ yauman min al-ayyām mustaḥaqqan li-wāḥid min al-anām*, Gronke, *Privaturkunden*, 465 (Urkunde 22, dated 647/1249). Another deed from 894/1489 has it as *ḍamān al-darak ladā khurūj al-mabīʿ mustaḥaqqan yauman min al-ayyām li-aḥadin min al-anām iltizāman sharʿīyan*, Hakob D. Papazyan, *Matenadarani parskeren vaveragrere. 2: Kalvacogre,* (Erevan: Nauk, 1968), 452. This is also an opportunity for the author to confess a previous blunder made in the translations of sale documents in Werner, *Iranian town,* where the relevant passages of *darak*-clauses have been partly mistranslated and should be amended according to what is said above.

35 Bīgdilī, *Madārik va Asnād*, 63, contract dated 1253/1837.

36 Jeanette A. Wakin, *The Function of Documents in Islamic Law. The Chapters on Sales from Ṣaḥāwī's* "*Kitāb al-shurūṭ al-kabīr*," ed. with introduction and notes (Albany: SUNY Press, 1972), 64.

37 Gronke, *Privaturkunden*, 42f.

38 A rare example for such a collection of model drafts that includes private deeds is the St Petersburg manuscript edited in Ẓabīḥī and Sutūdah, *Āstārā tā Istārbād*, 6:453–509 – a model contract of sale (*Dastūr-i taḥrīr-i baiʿ-i bāt*), 499.

39 Which should absolutely not be confused with *sijill*s, as court-registers, in an Ottoman context.

40 For a more detailed discussion, see Werner, *Iranian Town*, 229–39.

41 Unpublished deed of sale from the private collection Turabi-Tabatabaʾi in Tabriz, recording a sale between Mirza ʿAli Asghar shaykh al-islam (which explains the blessing invoked on the seller) acting as an agent for Shaykh Hasan b. Shaykh Muhammad Jaʿfar Mujtahid and the mother of Jaʿfar Quli Khan Dunbuli over the village Jamalabad near Urumiya, dated 10 Zi-qaʿda 1255 (15.01.1840).

42 See Werner, *Iranian Town*, 346, and Ẓabīḥī and Sutūdah, *Āstārā tā Istārbād*, 6:518, contract dated 992/1584. The appellation is not a Safavid phenomenon, see Dānishpazhūh, "Asnād-i Āstānah-i Darvīsh Tāj al-Dīn," 514f, with an early occurrence of *ḥarrarahū … al-dāʿī … al-qāżī …* in a deed dated 845/1441.

43 See above, Note 27.

44 Figure 2.8 from Werner, *Iranian Town*, 320, another example in Bīgdilī, *Madārik va asnād*, 268. This is also the reason why the best collections of private deeds outside of governmental institutions and shrines are in private collections held by clerical families in Iran; see for example the list of private collections that formed the basis of Ẓabīḥī and Sutūdah, *Āstārā tā Istārbād*, 6:27.

45 Bīgdilī, *Madārik va Asnād*, document 3 (1169/1755), 29, facsimile 249: the text of the elevatio is *khānī-yi ʿaẓīm al-shaʾnī ʿAlī Naqī Khān Bīgdilī dāma iqbāluhu al-ʿālī.* Examples for deeds involving ʿAbbas Mirza and Hajji Mirza Aqasi in the collections of the *Mūzah-i Kākh-i Gulistān.*

46 Qāʾim-maqāmī, *Muqaddamahʾī,* 315, 317, illustrations 318–19. For a wide selection of deeds written after 1303q not carrying these seals, see Bīgdilī, *Madārik va Asnād*, section on *Asnād-i amlāk* (an example for an officially registered deed is document 86, facsimile with seal on p. 332).

47 The two deeds placed side by side are document 2 dated 920/1514 in Ẕabīḥī and Sutūdah, *Āstārā tā Istārbād*, 7:3–4 (plates not paginated), and document 87, dated 1304/1887 in Bīgdilī, *Madārik va Asnād*, 333.

48 Deeds from the ninth century included in Dānishpazhūh, "Asnād-i Āstānah-i Darvīsh Tāj al-Dīn," 499 (dated 837/1433–34), 511 (dated 845/1441), or 549 (dated 928/1522) follow almost completely this type. For deeds from the same period carrying central endorsements on top of the deed, see Papazyan, *Matenadarani parskeren vaveragrere*, document 9, a *mubāyaʿah* written in Arabic from 1489/894, 450–54, facsimile 552–59, or document 15 from 931/1525 written in Persian, 471–72, facsimile 572–73.

49 Gronke, *Privaturkunden*, 50, 62–65. Of the four Persian deeds only one carries a proper endorsement, located at the bottom left side (Urkunde IV), and of the ten Arabic sale-deeds, four feature an endorsement above the main text (Urkunden VIII, IX, XI, XXII). Note the distinction made by Gronke between "Legalisierungsvermerk," "Schreibervermerk" and "Bestätigungsvermerk."

50 For example Dānishpazhūh, "Asnād-i Āstānah-i Darvīsh Tāj al-Dīn," 541, document dated 860/1456, written (*ḥarrarahu*) by ʿAbd al-Haqq b. Zayn al-Din b. Karim al-Din al-Qazi.

51 See for example Ẕabīḥī and Sutūdah, *Āstārā tā Istārbād*, 4–7, deed of sale 2 dated 938/1532 (note that the facsimile is not complete), variants include *waḍaḥa* etc.

52 Ḥusayn Mudarrisī-Ṭabāṭabāʾī, *Bargī az Tārīkh-i Qazvīn. Tārīkhchaʾī az Āstānah-i Shāhzādah-i Ḥusayn va Dūdmān-i Sādāt-i Marʿashī-yi Qazvīn*, (Qum: Marʿashi Najafi, 1361/1982), 429–34, plates not paginated, document 153 from 999/1591 features an *iʿtarafa*-endorsement on the top, but witness remarks and secondary attestations are still to be found at the bottom.

53 Papazyan, *Matenadarani parskeren vaveragrere*, 500-1, facsimile 594, document 25 is the first deed that looks like a "modern" deed, with a single endorsement on the top left side, witnesses on the right margin, written on one single sheet of paper, but its endorsement is not yet typical.

54 For example document 4 in Ẕabīḥī and Sutūda, *Āstārā tā Istārbād*, 9–12, dated 1042/1633, with typical layout and a top left endorsement of the *waqaʿa al-bayʿ* type.

55 See the ninth-century deeds in Dānishpazhūh, "Asnād-i Āstānah-i Darvīsh Tāj al-Dīn," which are all written in Persian. Late deeds written completely in Arabic can be found in Papazyan, *Matenadarani parskeren vaveragrere*, 450–54, deed from 894/1489.

56 Composition: "a legal agreement to pay a sum in lieu of a larger debt or other obligation" (COD), is the translation preferred by Owsia, *Formation of Contract*.

57 Safi-Nezhad and Krüger, *Traditionelle Landwirtschaft*, 93, document 1, dated 1332/1913. This collection of documents should be treated with care, since it contains numerous mistakes both in the edition of the texts and the translations.

58 Beck, *Konversationsgrammatik*, 461. He translates *muṣālaḥah-i ṣaḥīḥah-i sharʿiyyah namūd* as "verbriefte er rechtsgültig in vollem Umfange" and in a note gives the literal meaning as "schloß er einen korrekten rechtlichen Vergleich," and thus avoids the term sale.

59 Ẕabīḥī and Sutūdah, *Āstārā tā Istārbād*, 7:74f., document 6, dated 1255/1839, deals with a settlement of inheritance claims, 7:65f, document 2, dated 954/1547, is a very early example that refers explicitly to rights (*ḥaqq*) being ceded.

60 Owsia, *Formation of Contract*, 238, offers no reason for the popularity of *ṣulḥ* as a legal category, but is the only author to mention the special status of *ṣulḥ* in Iranian law.

61 Bīgdilī, *Madārik va Asnād*, 222–3, document 91, dated 1317/1900.

62 Owsia, *Formation of Contract*, 259 on the question whether a *ṣulḥ*-contract should be considered binding (*lāzim*) or facultative (*jāʾiz*), or in other words, dissolvable.

Part II

NEW SOURCES

3

ABOUT A SCROLL OF DOCUMENTS JUSTIFYING YASAVI RITUALS[1]

Bakhtiyar BABAJANOV

The scroll of documents discussed below was found recently in the course of work on a new catalogue which will include full descriptions of hitherto unknown Sufi texts dating from the eighteenth to early twentieth centuries kept at the Institute of Oriental Studies "al-Beruni" (Tashkent).[2] The documents have been glued together to form one scroll, a procedure known from other types of documents as for example, endowment deeds (*vaqf-nāmah*) or other secular and religious decrees and acts (*yārlīq*, *vaṣīqah*, etc.) (see Figures 3.1–3.3). The beginning of the scroll has not been preserved. The language of the documents is Arabic and Persian with only a few insertions of Turkic, mostly stemming from the *ḥikmatlar* attributed to Khwajah Ahmad Yasavi. The size of the scroll is 545 × 56 cm. The handwriting is *nastaʿlīq*, at least by seven different scribes can be identified. The paper is evidently from Bukhara (transparent, glossy and cream colour) and Samarqand (with dense structure and glossy). The different parts of the scroll (judging by the seals) were drawn up at different moments, in a time range spanning the eighteenth and early nineteenth centuries. Only once an author of one of the *rivāyat* included left some brief information about himself and cited two chains of a spiritual succession (*silsilah*) linking him to the Mudjadidiyyah and the Qadiriyyah lines (see below).

The so-called *rivāyat*s are glued together with the documents. *Rivāyat*s are quotations from different well-known compositions on *fiqh*, Sufi theoretical works which in our case are meant to give justifications of Yasavi or Qadiri rituals, most notably, the vocal commemoration of God, *dhikr jahr* and in particular, "the dhikr of the saw" *dhikr arra* which are both equated (using the method of analogy well known from works of *fiqh*, *qiyās*) with other ritual actions such as *takbīr*, *ṭalbiyyah*, *qirāʾat* and others. There are two documents in the scroll drawn up according to the type of theological/legal responses (fatwas) and sealed with the seals of qadis and muftis. The remaining fifteen documents (sometimes also sealed with one or two seals) are different *rivāyat*s by their volume.

In this chapter we offer a general review of these documents.[3] Besides, the political and religious situation which promoted the appearance of this unusual scroll will be briefly considered here.

General description of the document

As mentioned above the scroll lacks the beginning and therefore we cannot tell which title was given to it by its compiler (or the person who glued the pieces together into one scroll). In the card file catalogue of the Beruni Institute, this scroll is under the title "*Majmūʿat al-fatāwā wa al-riwāya li-ibāḥat dhikr jahr*." As it was said the text consists of separate documents written sometimes on the whole width of the paper, sometimes in two columns. As long ago as at the beginning of the 1960s the compiler of the corresponding card in the file catalogue counted the separate parts of the preserved text, dividing the scroll into twelve documents and marking their ordinal numbers at the beginning of the text. However, looking through the text in detail, we counted seventeen documents, which are completed by double or three times "*tammat*." On the other hand, though some of the documents are separated by a line and on this basis are counted as separate units, they are actually one document (for instance, numbers VII and IX). In order to avoid confusion we preserved the previous order and numbering of the documents, marking the new ones by additional ligatures "a", "b" … (11a, 11b …). We give a brief description of each document.

Document 1

The beginning is missing. The language is Arabic. The preserved part starts with quotations from an-Nasafī's *al-Khizāna*[4] which are legitimizing both types of dhikr. However, the following formulas are more preferable to be pronounced aloud (*jahran*): *takbīr* (calling out *allāhu akbar*) during the call to prayer (*azān*), *tahlīl* (pronouncing the *kalima – Lā ilāha illā llāh*), *tasbīḥ* (the formula *subḥāna Allāh*) and others. An opinion of Ibrahim Shahi (with reference to Hadith) is given further. He considered that *samaʿ* (the kind of vocal dhikr accompanied by music and sometimes dancing) could be interpreted as a religious duty (*fard*) or as Sunna or else as a reprehensible innovation (*bidʿa*): *samaʿ* is a duty for those who are seized by passion in their aspiration to God; it is Sunna for those whose love for God has overwhelmed their hearts, and it is an inadmissible innovation to hypocrites.[5] And *samaʿ* makes those cry whose love to God has won over their hearts.

Further, the author adduced arguments in favor of vocal pronunciation (*jahran*) of *tasbīh* formulas during the recommended nightly prayers during the month of Ramadan[6] or in other ritual actions. In this, there are many references to works of the hanafite school of law. The document is sealed: al-Mufti Muhammad Yunus Khwajah ibn ʿIsam al-Din Khwajah-i ʿAlavi.

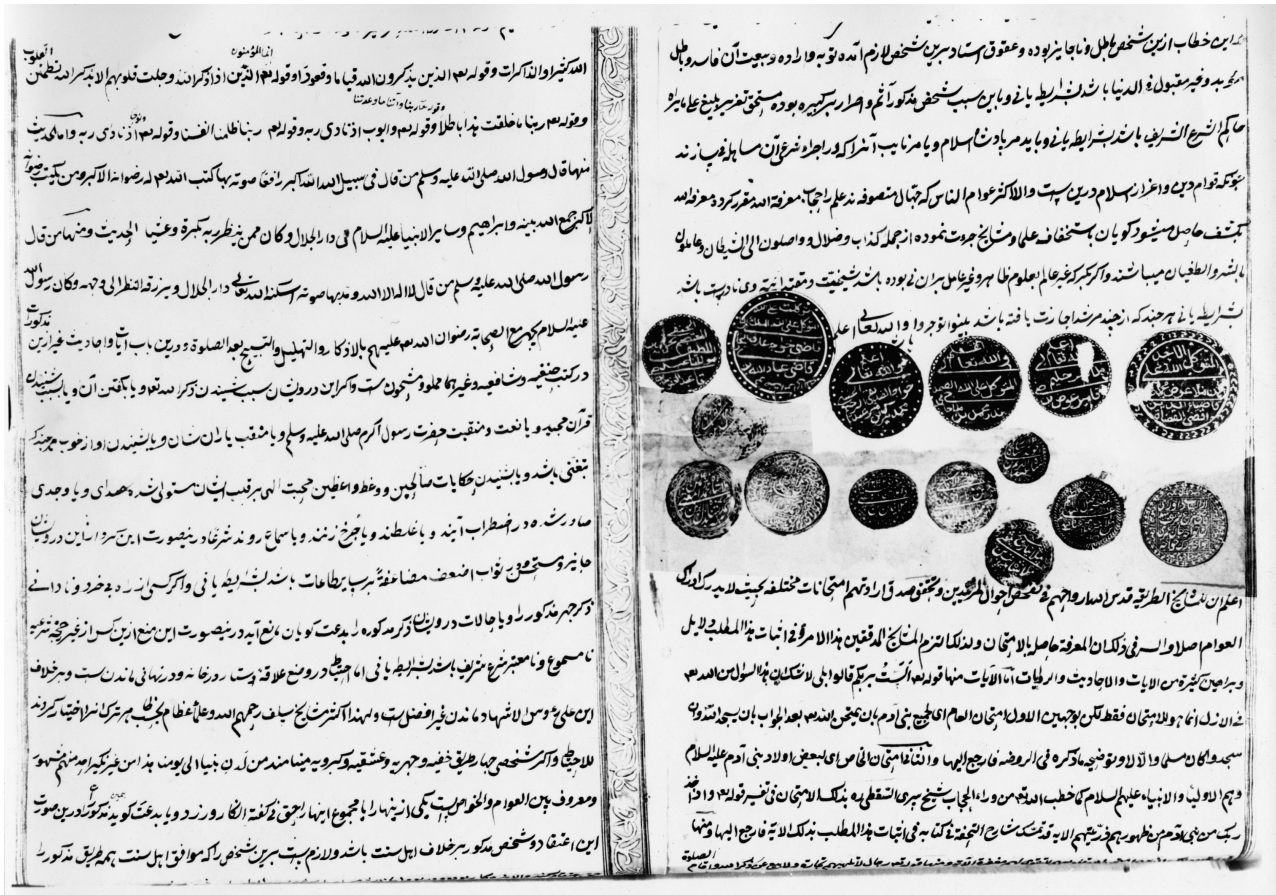


Figure 3.1 Documents 1–3

As we see this document is most probably a usual *rivāyat*, i.e. it quotes extensively from different theological compositions and collections of fatwas where all types of rituals implying vocal pronunciation of some formulas are considered legitimate.

Document 2

The next document is also a *rivāyat*, which starts with a quotation (in Arabic and Persian) from the work *Tanbīh al-Żallīn*,[7] apparently not extant, by Shaykh Khudaydad, a Yasavi author from Bukhara, second half of the eighteenth century (see below). It is confirmed in this selection of quotations that most of the author's contemporaries who call themselves "*ahl-i khwājagān va naqshbandiyyah*" are actually totally ignoring what this means. And in particular, since the path of the Khwajagan unites the methods of all four tariqas,[8] it would be completely wrong to consider that the Khwajagan keep exclusively to the silent types of dhikr (*akhfāʾ wa sukūt*). Further, the distinctive features (which appear like this in the quotation) of Khwajagan path are evoked. In particular, the only secular occupations (*ʿamalat-i dunyā*) to be recognized are the links with governors (*umarāʾ va salāṭīn*), rich people, the representatives of the normative clergy (*ʿulamāʾ-yi dunyā*) and that Khwajagan have recourse to this kind of occupation only after they have succeeded in destroying their secular affections. Among the other distinctive peculiarities of this tariqa the following ones are cited: *samaʿ* is recognized as one kind of Sufi spiritual nourishment (*ghiẕa-yi rūḥ*), serving to strengthen belief; listening to the loud voices of hafiz promotes excitement of passion and love to God. *dhikr jahr* is considered a permissible and laudable innovation (*bidʿat-i ḥasanah*) which the Khwajagan have introduced into Sufi practice.

The document is completed as follows: "At present, the *Tarīqah-ʾi Khwājagān* does not exist, and those who pretend to belong to this tariqa, in fact, do not know the secrets of Khwajagan Path (*suluk-i Khwājagān*)." And the last postscript: "This question is [elucidated] in '*Tanbīḥ al-Żallīn*'."[9]

Document 2a

The beginning of the document gives an explanation of the rules applying for the recitation of the Qurʾan. Moreover, it is proved with reference to Hadith that vocal and melodious reading is to be preferred. Further again, concerning the question whether the vocal commemoration of God *dhikr jahr* is legitimate, this practice is compared to such rituals as *takbīr* and *tahlīl*, the latter, as it is known, are pronounced aloud before or during ritual prayers or when performing additional prayers (*baʿd adāʾ al-ṣalawāt*).[10]

Document 3

The document is in Arabic. The first part of the document is dedicated to *samaʿ*. Its compiler tried to justify this ritual by reference to stories about the mythic Prophet al-Khidr.[11] The latter, according to the legend, fully observed shariʿa (sic) in everything and was fond of listening to attractive voices, admired nice dances and bodily movements; *samaʿ* was a usual occurrence at his meetings. *Dhikr jahr* is justified by approximately the same legendary stories. For instance, the legend is cited according to which Allah ordered Israfil,[12] one of his very close angels, to perform *dhikr jahr*. Here is a reference to Imam Jaʿfar al-Sadiq who allegedly called out: "*Jahr* – Islam's power!" (*al-jahr quwwat al-islām*). The document is completed by additional references to the Qurʾan (for example, 8:47) and other theological arguments in favor of the vocal dhikr. At the end, there is a seal of a certain al-Mufti Muhammad Yunus Khwajah ibn ʿIsam al-Din Khwajah ʿAlavi.

Document 4

The language is Arabic. Here, the places and times, when dhikr is prohibited, are listed: before and during the Friday khutba, during prayers, at the time when the community is reciting the Qurʾan or somebody is reciting and the rest is listening, at the places in the mosque where disciples and madrasa students gather for learning, and at last, before the second call to prayer (*iqāma*). In fact, these regulations are a quotation from a well-known composition *al-Fatāwā al-Ṣufiyya fī Ṭarīq al-Bahāʾiyya* (an author is Fazlullah Muhammad b. Ayub).[13]

Document 5

This document is drawn up in Persian and has an Arabic title written in the *dīvānī* script: *Akramu al-aʿlā aʾimmat al-islām raḍiya Allāh taʿālā ʿanhum* (Explanations of the great expressions of imams of Islam – my God Most High be satisfied with them!). Here the main question under discussion is the Sufi tradition regulating the relationship between disciple and master, murid and *murshid* and the appearance of "special circumstances" during the training process which are marked by the term *imtiḥān* (trial). The statement follows the form of rhetorical questions which evoke a positive reply. At the beginning it is said that all the prophets and past shaykhs (*mashāʾikh-i salaf*) strove for knowledge of God and that this striving is God's command (*amr*) and quite corresponds to shariʿa. However, to travel the path without a *murshid* is inadmissible. A *murshid* has to find an acceptable form of training for each of his murid. The difficulties the path leading eventually to God presents determine the specific character in the relationship between master and disciple; for all this, any deviation from the norms of relations accepted between other people is natural and permissible. For instance, it is considered to be appropriate (*jāʾiz va*

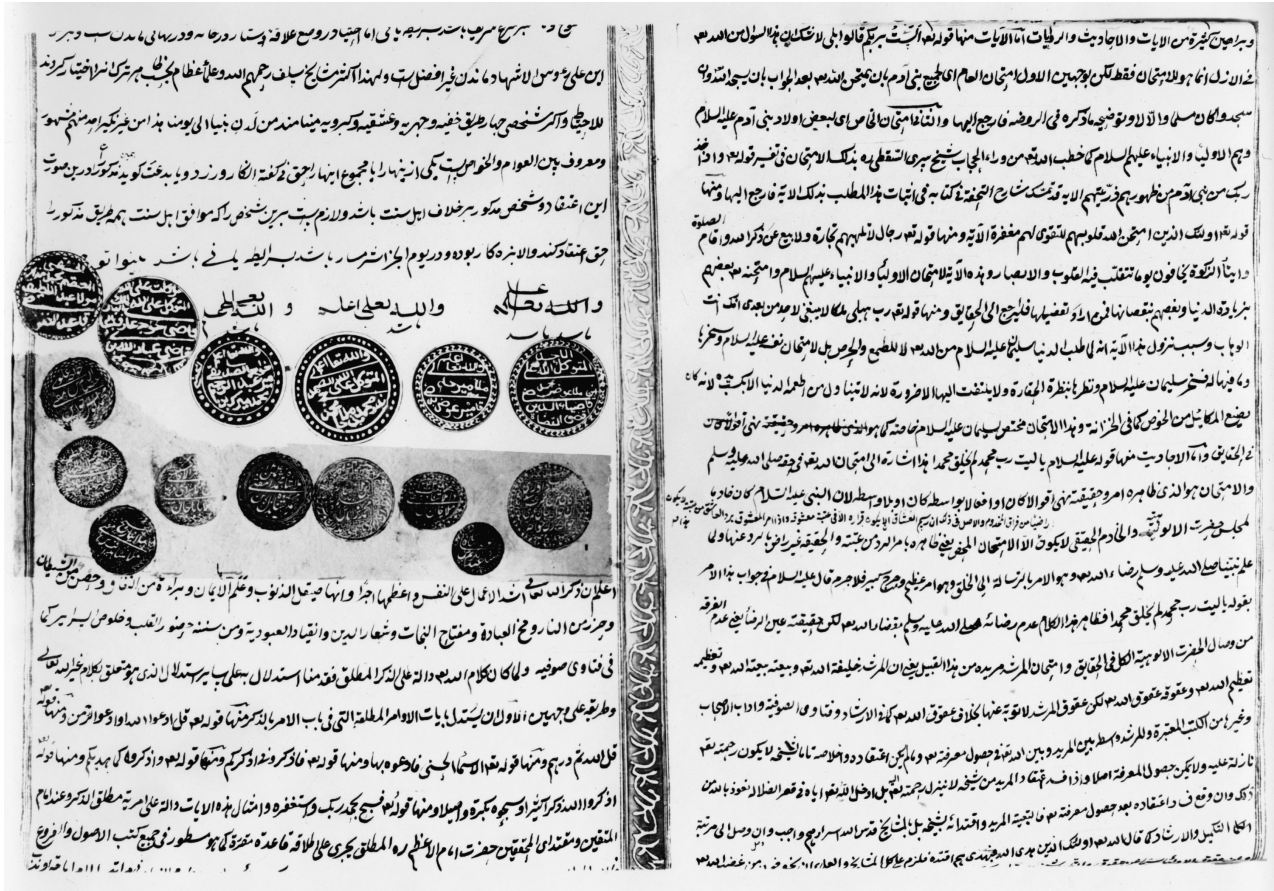


Figure 3.2 Documents 4 and 5

mashrūʿ) that a *murshid* who has *irshād* (permission to train disciples) scolds his negligent murid for his actions and even submits him to corporal punishment. Then the question is discussed whether a murid who has performed the rite of spiritual and physical submission (*bayʿat*) has a right to leave his teacher. The document is certified by ten seals: Mufti Muhammad Yunus Khwajah b. ʿIsam al-Din Mufti Khwajah ʿAlavi, 1230;[14] Mulla Mir-baba b. Mulla . . .; Mulla Shah-i Abdal b. Mufti Mulla Shah-i Muhammad Amin. 1240; Muhammad Qurban . . . ibn Mulla ʿAbd al-Jabbar, 1243; Mulla Jan b. damulla Shah Naʿmat . . . 1242; Shah-i ʿAbd al-Karim b. Mulla Akhund Shah-baz, 1237; Khwajah-i buzurg Khwajah b. Khwjah-i khan ʿUmari Qadi [al-] shariʿatu sharif, 12??. There are also five imitations of seals (see illustration).

Document 6

The language is Persian. It is entitled like the previous document: *Akramu al-aʿlā aʾimmat al-islām raḍiya Allāh taʿālā ʿanhum*. The document is also similar in style to the previous one – rhetorical questions predominate. The aim of drawing up this document is revealed in the first sentence:

> Explanations of the great expressions of imams of Islam (may God Most High be satisfied with them!) on the following question: a group of dervishes gathers in the open and practices the vocal dhikr in front of many people. (And they do it) until their hearts get softened and the rust, dirt and curtains hiding the veiled one falls down from it . . . ."[15]

These actions of dervishes directed to remove ignorance (*ghāfilān*) from the hearts should be considered appropriate since they correspond to the shariʿa (*jaʾiz va mashrūʿ*). Further, the compiler of the text adds that this dhikr of dervishes is performed every time in the form of *arra*,[16] for the reason that the Prophet performed this type of dhikr on mount Hiraʾ together with his Companions.[17] This tradition was accepted by many pious shaykhs (*mashāʾikh-i salaf*). The compiler of the document further stresses the legitimacy of this kind of dhikr by adducing a consensus reached by the mujtahids (*ijmaʾ-yi munʿaqad shud*), who found direct instructions (*nusus*) in the Qurʾan and the Hadith. However, one can see from the subsequent text that this consensus concerned only the vocal pronunciation of the *tahlīl*, *takbīr* formulas and the call for prayer (*azān*).

The next part of this document conveys an explanation of all "doubtful" actions of Sufis practicing the vocal dhikr. It is affirmed that when dervishes hear a mention of Allah (*dhikr Allāh*) or praises and glorification (*naʿt va munqabaż*) to the Prophet or even just hear a hafiz's pleasant voice chanting a holy text, they at once start joining in the singing (*ba-taghannī bāshad*). If dervishes hear the stories (*ḥikāyat*) about pious ancestors or sermons, these kindle the fire of infinite divine love in their hearts and they go on to experience states of ecstasy and emotional outbursts (*vajdī va sadāyī*) which cause them

great suffering. They fall down on the earth or start involuntarily hitting the tambourine or they burst into *samaʿ*. The compiler of the text concludes that *jahr* as well as the described actions are quite in keeping with the shariʿa and that only an ignorant and silly person could think of them as innovations (*bidʿah*), so that it is not possible to argue their banning on the basis of the *shari'a*.[18] Ten seals (same persons as in the previous document) are impressed at the end of the document (V).

Document 7

The language is Arabic. This document is actually a fatwa regulating the relations between murid and *murshid*, with particular consideration given to the problem of a trial (*imtiḥan*) of murids by their master. The content is close to document 5 with the difference that it is more explicit in recommending that *murid*s adopt certain forms of behaviour towards *murshid*s. The terms of a murid's trial are also specified here in order to identify the level of his perfection (*daraja*); and the signs (*ʿalāmatun*) identifying certain stages of a spiritual perfection are marked. To illustrate this, examples (borrowed from other compositions) of testing murids are given, showing Ahmad Yasavi (*d*.1164) and his disciple Hakim-Ata; the Herati shaykh Zayn al-Din Khwafi (*d*.1435) and his disciple shaykh Darvish Ahmad al-Samarqandi and others. Only that shaykh is recognized as legitimate who has his *Irshād-nāmah*.[19]

Document 8

This document is in Arabic. It recalls usual *rivāyat* by its structure, but has more general content. The main source the compiler used has been mentioned above: "*al-Fatāwā al-Ṣūfīya* …, besides, he quotes from other Sufi works. The text begins with the usual Sufi references to verses from the Qurʾan (8:47; 18:24/23; 29; 44; 33:41; 13:28; and 17:110) which allegedly make the commemoration of God (*dhikr*) a duty. Hence one can draw the conclusion that such an obligation is absolute (*muṭlaq*), i.e., clearly laid down in Qurʾan and Sunna, and consequently it should not be considered an inadmissible innovation (*bidʿa*). The compiler of the document considers that practicing both types of dhikr is admissible though he pays special attention to the *jahr* variety. However, in the arguments stated afterwards (these are extracted from different sources, fiqh as well as Sufi treatises), the discussion most probably concerns normative rituals such as *tasbīḥ* after prayers and so on (see above).

Document 9

The language is Arabic. Actually it is a continuation of document 7. Here special attention is given to the *murshid*'s qualities, his "knowledge of the veiled" and as a consequence, his abilities to show a wonder-working foresight (*karāma*) which

becomes similar to the prophets' ability to accomplish different unusual actions (*iẓhār al-muʾjizāt*).

Document 10

The language is Arabic with two *rivāyat*s in Persian. There are eight seals at the end of the document. It continues the subject of document 8, paying special attention to the justification of *jahr* whose conformity to shari'a was proved in fatwas of "ulama of the hanafite and the shafiite schools of law." Further it is affirmed that the legitimacy of this kind of dhikr is also proved by the consensus (*ijmāʿ*) of a number of jurists; the most well-known of them are as follows: 2,000 mujtahids who lived in the times of Khwājah Ahmad Yasavi, and the 22,000 excellent ulama and 1,000 *mudarris*es who were in his service. This *ijmāʿ* was based on how the Prophet acted; the same *ijmāʿ* existed in the times of Imām al-Kardari and Muhammad al-Parsa al-Bukhari (*d*.1419). There is another reference to the latter's opinion that *jahr* is acceptable in this very document. At the end of the text, two *rivāyat*s in Persian and one in Arabic are added.

Document 10a

The language is Persian. With reference to Imams Abū Hanīfa and Abu ʿAbd allah Muhammad al-Shafiʾi as well as Khwajah Ahmad Yasavi, it warns against "embarking on the (Sufi) path being ignorant (*jāhil*), that is, not having mastered the exoteric sciences (*ʿIlm al-ẓāhir*)." As an illustration, a *ḥikmat* by Ahmad Yasavi is quoted (in Turkic) and commented upon.

Document 10b

The language is Arabic. To start with, a Hadith is adduced and briefly commented upon (evidently, it is false):

> Allah said (glory and eminence to Him!): Who does not forget to mention me, I will initiate him into sciences without training and make him powerful before 20 (years of age) and give him property without (mastering of) a profession and earn his living without difficulties.

A commentary on a famous Sufi maxim follows which is ascribed here to Najm al-Din Kubra (killed in 1221): *Sharīʿat* is like a ship, *ṭarīqat* is like the sea, *ḥaqīqat* is like a pearl.

Document 10c

The language is Persian. It is an excerpt from a fatwa about dhikr, which was composed by the *faqīh* (from Mawarannahr) ʿAlī b. Muhammad b. ʿAlī b. Mahmud

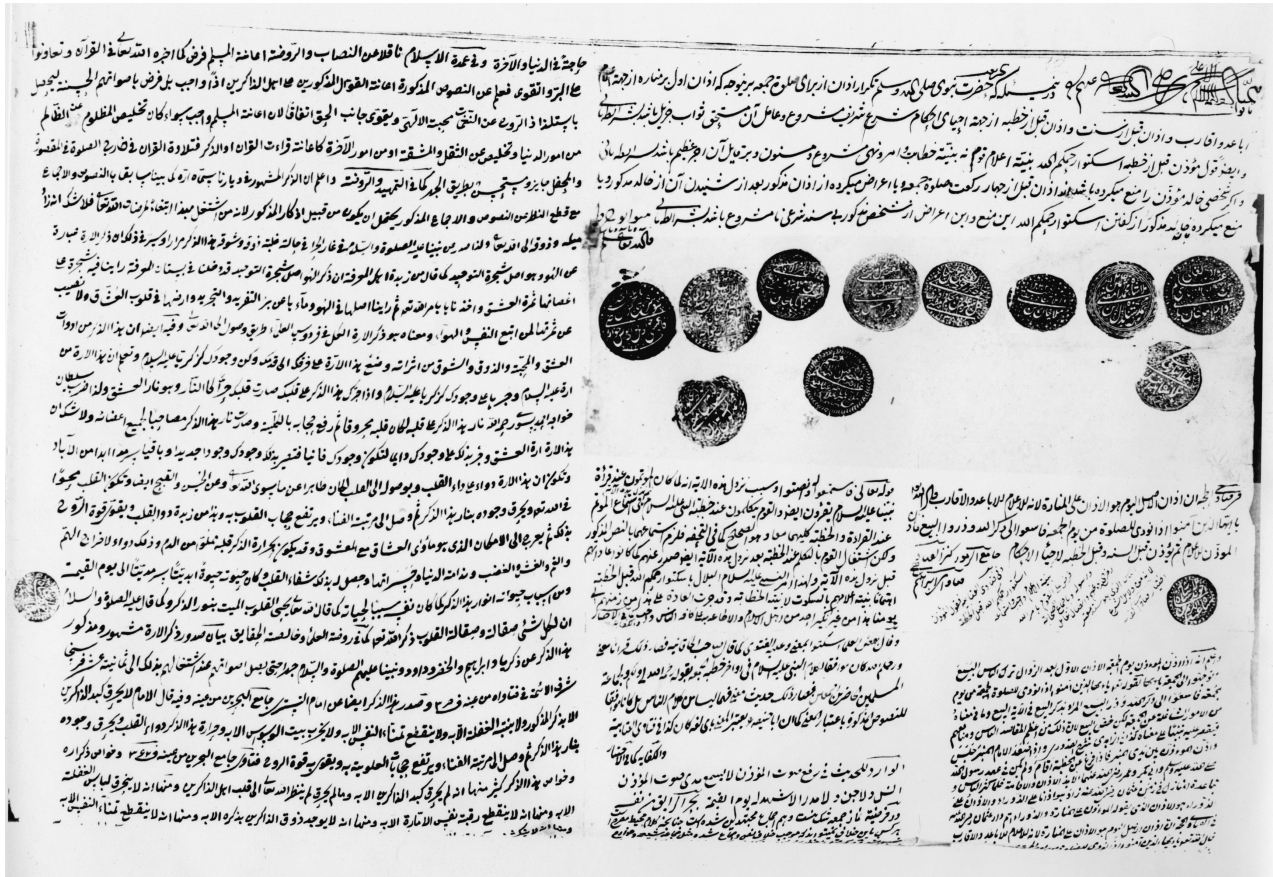


Figure 3.3 Document 10

al-Muhtari, al-Khwarazmi al-Kubravi (sixteenth century)[20]; at the end of the text, there is a reference to one of his works, *al-Fatāwā ʿAlīyah*.[21] The essence of the problem (*masʾalah*) under discussion is in the following: is a *muḥtasib* legally entitled by the shariʿa to prohibit the vocal and public dhikr (*ẕikr-i ʿalānīyah*) held by the Muslims if their aim is to admonish the negligent (*tanbīh-i ghāfilīn*)? The reply is given with a reference to Imam Abu al-Fazl,[22] in the sense that this ritual is an acceptable and laudable innovation (*bidʿatun ḥasanatun*; or – *bidʿa ḥasana*) and should not be banned even if this solution is not without contradictions. In the same place, another curious conclusion was drawn with reference to Najm al-Din ʿUmar an-Nasafī:[23] any action whose legitimacy cannot be established without contradictions, but is widely practiced by the Muslims, should not be forbidden by the *muḥtasib* because otherwise he would overreach his competence.[24] This excerpt is certified by eight seals: ʿAbd al-Rahim b. Akhund Shah-i Mulla Niyaz …123?; Khwajah-i Buzurg Khwajah b. Khwajah-i Khan ʿUmari Qazi [al-]shariʿatu sharif. 12??; Mulla Baba-jan b. Mulla Mufti … 1230; Mulla Mir .. b. Mulla ʿInayatullah ; Muhammad Shah-i Abdal b. Mufti Mulla Shah-i Muhammad Amin, 1240; Mulla … Khan b. Mulla Niyāz-shaykh Mufti; Mufti Muhammad Yunus Khwajah b. Mufti ʿIsam al-Din Khwajah ʿAlavi, 1230.

Document 11

The language is Arabic and Persian. Unlike the rest of the documents it is written over the whole width of a sheet and framed by many coloured lines. It is stated at the beginning that the dhikr using "*huwa*" as a formula should be performed aloud (*jahran*). Brief grammatical analyses of the words "*jahr*" and "*ikhfā*" come next. Further, the arguments given in the documents above are repeated with the same references to the Qurʾan, the Hadith, decisions of celebrated Hanafi and Shafiʿi *faqīhs*, all proving that dhikr, and in particular, *dhikr jahr* can be legitimately practiced by Muslims. This is stated in particular of that type of dhikr which was introduced by al-Sultan Khwajah Ahmad Yasavi which, as the compiler affirms, was corroborated by a consensus (*ijmāʿ*) including many distinguished ulama. The document ends with Persian quatrains praising the first four caliphs of the Prophet (*chahār-yār*).

Document 11a

The language is Persian. It is a poetic insertion which is about the Sufi Path (*ṭarīqah*) as one of diverse ways to Allah, about the appropriateness of *dhikr jahr*, etc.

Document 11b

Here the compiler somewhat unexpectedly gives the two chains of his spiritual succession (*silsilah*) linking him to the Mujaddidi and Qadiri lines. He takes the

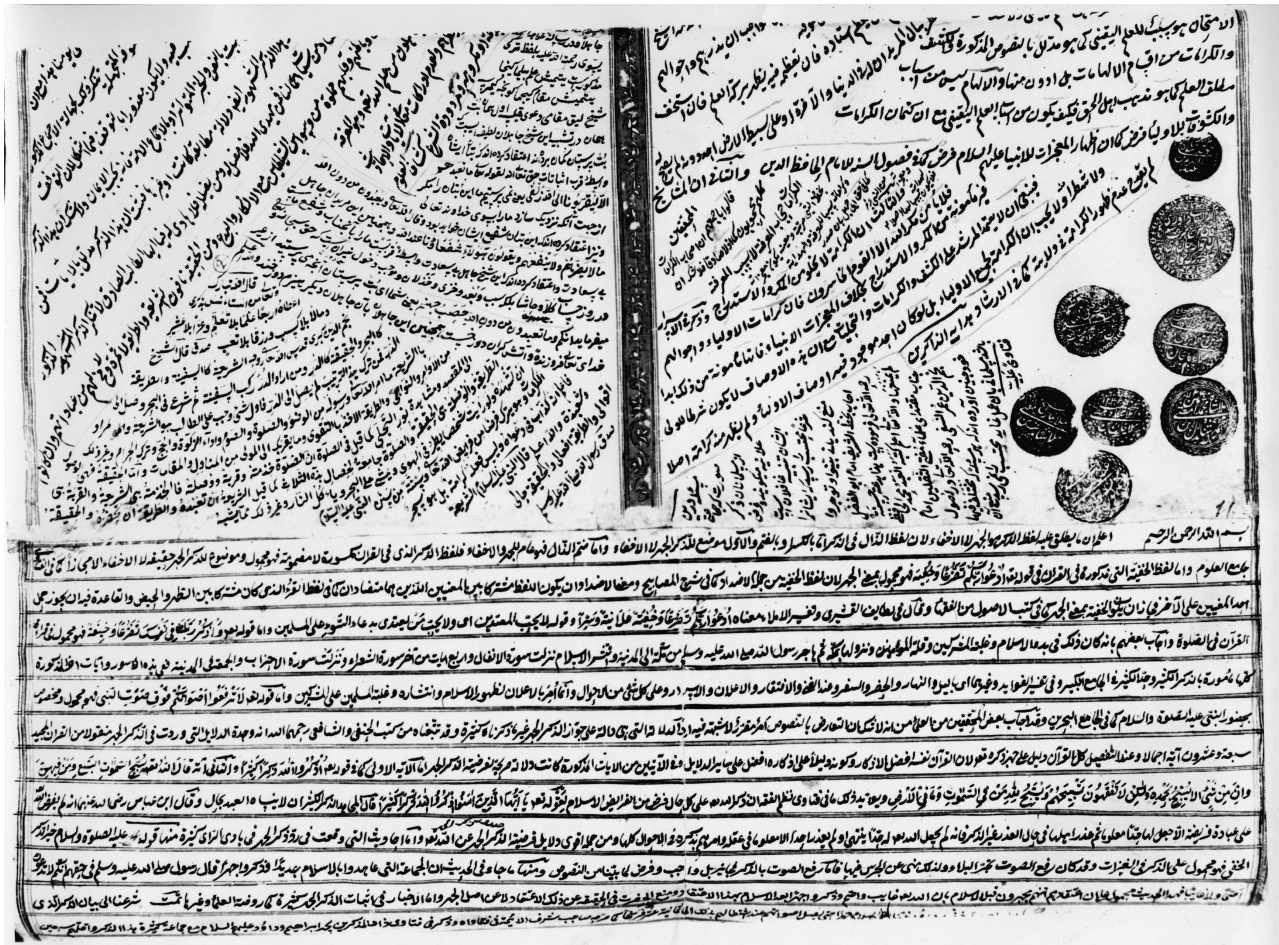


Figure 3.4 Document 11

opportunity to introduce his *silsilah* by the following remark "this poor man (= author) has yet another *ijāzat*, namely to the sublime Qadiri tariqa (*dīgar bāyad dānist kih īn faqīr rā ijāzat-i tarīqah-i ʿaliyyah-i Qādiriyyah nīz hast* …), this phrase can mean that above (perhaps in the lost beginning of the scroll) one more of his *silsilah* was cited.

Document 11c

More small poetic insertions in Persian follow with praise of the *dhikr jahr*.

Document 11d

Analysis of advantages and statement of peculiarities of the pronouncing technique of *dhikr tayyibiyyah* (that is, using the *shahāda* as formula) in Arabic. There are references to *Fatāwā-yi Ṣūfiyyah*, *Fatāwā-yi Qāżī-khān*[25] and others, where the cases in which certain ritual formulas (*tasbīḥ*, *tahlīl*) are to be pronounced aloud (*jahran*) before, after and during prayers are enumerated. The vocal pronunciation of these formulas promotes "the cleansing the heart from rust and prevents negligence and ignorance (*ghaflat*)." Then the terms on which the short chapters (*maqṣūrah*) of the Qurʾan can be recited vocally are given, and the text states that these rituals are justified, appropriate and even preferable (*jāʾiz wa mustaḥabb*). The last part of the document is dedicated to the *dhikr arra*. Here the compiler starts like this: "Let it be known that in our place (*fī dīyāri-nā*)[26] the dhikr is known under the name of *arra*" and that since time immemorial its legitimacy is directly based on the Qurʾan and the Hadith (*nusus*) as well as consensus (*ijmāʿ*) as was stated above (that is, in the other parts of the scroll). Next, the arguments cited above in favor of this type of dhikr are repeated over again. In particular, it is affirmed that the Prophet with his Companions resorted to the vocal dhikr in the *arra* variety on mount al-Hiraʾ when he was seized by love of God and driven into states of ecstasy (*shawq wa ghalaba*). The basis of this dhikr is the formula "*huwa*" (= He), this name is, among the names of Gods "the root of the tree of monotheism" (*aslu shajarati al-tawhīd*). Then the peculiarities characterizing this and other types of dhikr are described (for instance, the dhikr of the heart, the dhikr of the tongue, the dhikr of the hands and so forth). There is a seal: Shah ʿAbd al-Karim b. Akhund Mulla Shah Niyaz, 1238.

Document 12

Fatwa in Persian concerning the twofold call to prayer (*azān*) on Fridays. It was decided that by Sunna, the *azān* should be pronounced twice: before the *khutbah* from the minaret and the second time – in the mosque, before offering the individual *namāz* (*Sunnat*) which is held before the communal prayer. The text is followed by a resumé in Arabic. The fatwa is sealed with eleven seals: Qazi ʿIsa

Khwajah b. Khwajah Yunus, 1237; Khwajah-i Buzurg-khwajah b. Khwajah-khan ʿUmari; Muhammad Yunus Khwajah b. ʿIsam al-Din Mufti Khwajah ʿAlavi, 1230; Mulla Baba-jan b. Mulla-birdi Mufti, 123?; Mulla Mir-baba b. Mulla ʿInayatullah, 1230; Muhammad Kara-bash b. Mulla ʿAbd al-Jabbar Mufti, 1232; Khwajah-i Buzurg-khwajah b. Khwajah-khan ʿUmari, 123;[27] Mulla-khan b. damulla Shah-i Naʿmat Mufti. 123?; Muhammad-Shah Badal b. Mulla Shah Muhammad-Amin Mufti, 1240; Damulla. ..-khan b. ...; Mulla Shah-i Hidayat b. Mulla Niyaz Shaykh Mufti.

Document 12a

*Rivāyat*s from *fiqh* works, regarding the rules of *azān*

Sufi rituals, as the Path (*ṭarīqa*) to God himself, were always debatable from the point of view of esoteric scholars. In particular, the jurists and traditionalists could not reconcile themselves to the ritual actions commonly practiced in the milieu of the Yasaviyyah brotherhood (many specialists connect their origin with pre-Islamic rituals of shamanism), among which *samaʿ*, *dhikr arra* and the ritual dance *raqṣ* were and still are the most questionable in the eyes of some ulama. As is well known, this was what induced the Sufi shaykhs themselves to look for arguments proving the legitimacy of the Path and the rituals they were practicing. Apparently because of this the Sufi treatises rarely did without a commentary on this or that aspect of the rituals. The authors naturally aspired to prove that their Path conformed to the shariʿa. The most widely used arguments in this respect are based upon a special interpretation of certain verses of the Qurʾan and some Hadith.

In Mawarannahr, *Ḥadīqat al-ʿArifīn*[28] seems to be one of the earliest Yasavī treatises extant,[29] which is in a significant portion dedicated to legitimizing *dhikr jahr* and *samaʿ*. The author considers forty-seven verses of the eighth chapter of the Qurʾan (fol. 4b) as a direct hint at *dhikr jahr* (using the formulas "*huwa*" and "*allah*"). Further the author (Ishaq b. Ismaʿil-Ata) sharply objects to those scholars who consider *dhikr jahr* a reprehensible innovation (*bidʿah*). His arguments are as follows: this dhikr cannot be considered an innovation because the vocal pronunciation of some ritual formulas (for instance, *takbīr*) was accepted in Islam since the times of the Prophet and his Companions. Besides, this type of dhikr is aimed at cleansing the heart of the *sālik*, the traveller on the Path, at glorifying Allah and so on. Then Ishaq b. Ismaʿil-Ata adduces other arguments which he culls from works on *fiqh* where the vocal pronunciation of other ritual formulas (5a–10b) is justified. Likewise, the author tries to prove the legitimacy of *samaʿ*, although in this case, he did not manage to find direct support in the Qurʾan. The main aim of *samaʿ* is to improve the spiritual qualities and to help suppress carnal attachments. Ishaq-Ata also warns that simple and uninitiated people (*ʿāmmah*) are forbidden (*ḥarām*) to perform this ritual, whereas it is a necessity for the select. The use of a tambourine[30] (*daf*) is considered permissible in *samaʿ* (with reference to ʿAbdullah b. Masʿud).

Evident justification of *dhikr jahr* but without a sufficient basis (at any rate, as far as *fiqh* standards go) can be noticed in other Sufi authors, for instance, the well known Naqshbandi writer al-Kashifi.[31] Better arguments in defense of the *dhikr jahr* and the *samaʾ* in the framework of shariʿa was penned by the famous Naqshbandi shaykh Ahmad b. Mawlana Jalal al-Din al-Kasani al-Dahbidi, better known as Makhdum-i Aʿzam (*d*.1542).[32]

Later, in the mid-seventeenth century, Muhammad ʿAlim al-Siddiqi al-ʿAlavi, the biographer of the Yasavi shaykhs (*d*.1093/1682), repeated and even extended his reasoning. He dedicated the first part (*maqṣad*) of his work *Lamāhat min nafahat al-quds* to the justification of *dhikr jahr* and *samaʿ*.[33]

The most richly argumented and methodically professional reasoning in justification of *dhikr jahr* comes from an outstanding *faqīh* who at the same time was a Naqshbandi shaykh and disciple of Bahaʾ al-Din Naqshband, Khwajah Muhammad Parsa (*d*.1419).[34] In his as yet little known work *Majmūʿat al-Fatāwā*,[35] he uses all kinds of legal arguments and thus conforms to the norms ruling jurisprudential argumentation. From the very beginning the compiler raises the question whether *dhikr jahr* is a reprehensible action (*makrūh*) in Islam. He notes that this question has not found a common answer among the ulama, but he specifies at once that dhikr is only a means to achieve the state of *hal* (spiritual trance). The fatwa of Muhammad Parsa is based on the tenets and methods usual in hanafite jurisprudence. In particular, he makes wide use of the method of *qiyās* (judgment by analogy) or the particularly hanafite method of preferring a given solution (*istisan*), and thus, he comes to the conclusion that the vocal commemoration of God is legitimate on the basis of obvious (*ẓāhir*) analogies to consensus (*ijmāʿ*) reached regarding ritual actions such as *takbīr*, *aẕān*, the vocal reciting of the Qurʾan (*qirāʾat*) and others (180b–181a). He also tries to prove that this dhikr is an acceptable and laudable innovation in Islam (*bidʿatun hasanatun* or *bidʿa hasana*) which conforms to the principles of shariʿa. (181a–182a).[36]

Fazlullah b. Muhammad b. Ayub, another Naqshbandi author and *faqīh* of the end of the fifteenth to the first half of the sixteenth centuries, had a few more reservations concerning the legitimacy of the vocal *dhikr*. Even in the title of his work (*Fatāwā Ṣūfiyya fi Ṭarīq al-Bahāʾiyyah*),[37] the aspiration to prove the legitimacy of the practiced rituals is apparent. At the beginning he cites the scholarly consensus (*ijmāʿ*) existing about the vocal forms of the mentioned rituals (*takbīr*, *tasbīḥ*, *aẕān* and so forth), and like other authors he concludes from this that the vocal dhikr as a Sufi ritual can legally be practiced. However, the author at once specifies the terms under which *dhikr jahr* is forbidden (131a–133b, 134b–139b). As for the quoted verses from the Qurʾan (8:47), he sees them as a simultaneous incitent to both types of dhikr (*bi-l-lisān wa bi-l-qalb*; 139b–142b).

Approximately half a century later, ʿAli … al-Kubravi, another *faqīh* of the early Shaybanid (1500–1603) era, also addressed the question of the vocal dhikr[38] in his compilation on *fiqh*, *Fatāwā-yi ʿĀliyyah* (which he composed in

Persian, an absolutely exceptional phenomenon for works of this genre),[39] but in his brief conclusions he only says that the legitimacy of this ritual was established by Sufi shaykhs and ulama of both the hanafite and the shafiite rites.

Thus, even our brief survey shows that Transoxanian authors attempted to prove the legitimacy of *dhikr jahr* and *samaʿ* with surprising regularity over an extended period of time. Obviously, this practice was always subject to criticism brought to the fore both by Sufi shaykhs preferring the silent *dhikr khafī* and by jurists/traditionalists. This criticism probably culminated during the last quarter of the eighteenth century when it was instrumental in opposing shaykhs from different schools and brotherhoods. This was the period when Shah-Murad (Maʿsum) b. Daniyal Atalik (1800–1885) ruled, the most consistent supporter for a revival of the shariʿa among the rulers of the Mangit dynasty. He supported the aspirations of some circles in the Mujaddidiyya[40] Sufi brotherhood who fought to forbid *dhikr jahr* and other rituals which were dubious from the traditional *shar'i* point of view.[41] By the way it was Shah-Murad who undertook an attempt (which, however, was never completed) at bringing together a new authoritative compilation of fatwas[42] which would have interpreted the formulas used vocally in *aẕān*, *takbīr* and similar exclusively as a part of the prescribed rituals they were part of, but not as a starting point and basis (*al-aṣl*) to be used in legal reasoning to reach the conclusion that *dhikr jahr* can be practiced legally,[43] as it is done in the documents presented in this chapter.

In his struggle for the "renewal of pure, pristine Islam," at first Shah-Murad proclaimed that the mentioned Yasavi (or Kubravi or ʿIshqiyya)[44] rituals are inadmissible innovations (*bidʿah*). Mujaddidi rituals seemed to him much closer to what he understood to be shariʿa, and in particular the silent *dhikr* (*khafī*),[45] which the Mujaddidiya practiced. This rather harsh attack which Shah-Murad led against Sufi rituals[46] which were generally practiced in Bukhara inevitably provoked a reverse reaction on the part of the leaders of those brotherhoods whose ritual practices now turned out to be legally unacceptable. For instance, Khudaydad b. Mulla Tash-Muhammad ʿAzizan al-Bukhari (a contemporary of Shah-Murad), a little known Yasaviyyah author, composed a number of works in Arabic, Persian and Turkic in which he made considerable effort (judging by the massive volume and superior quality of his works) to justify Yasavi[47] rituals. These works have only now become known and only now have attracted scholarly attention.[48] The unique compilation of documents presented in this chapter can obviously be regarded in the same way: that is, as an original "Yasavi answer" (or "Kubravi", or "Qadiri") to the religious reforms introduced by Shah-Murad. Even though the earliest date on the seals is 1237/1811–1812 and thus falls into the reign of Amir Haydar (1800–1825), son and heir of Shah-Murad. His reign distinguished itself already by some tolerance towards the rituals of the diverse Sufi brotherhoods.[49] It can be assumed that this relatively tolerant situation came about as a result of the efforts by a number of Sufi authors who prepared the ground for the final (in our case even "documentary") justification of a number of "doubtful" Sufi traditions and ritual practices. However, the legal

reasoning they used in the process (even their use of such principles and methods of *fiqh* as *istiḥsān* and *qiyās*), remained eminently vulnerable for criticism on the part of authors who supposed that Islam should be cleansed of all innovations, that is, of everything which has not been practiced in the times of the Prophet and his followers.

Notes

1 I owe special thanks to Professor J. Paul, who corrected the English translation of this article and gave me much inspiration.

2 This work is the second stage of describing non-catalogued Sufi works (eighteenth to twentieth centuries) in the holdings of the Beruni Institute. The cataloguing is being conducted under the supervision of Professor Jülgen Paul and the author of this chapter, with financial support by the Gesellschaft für Technische Zusammenarbeit (GTZ).

3 We hope to accomplish their full publication in the future.

4 On the whole the texts have references to more than 100 authors and compilers of fatwas, with quotations justifying the vocal commemoration of God or explaining the rules of a vocal pronunciation of other ritual formulas (*azān*, *takbīr* and others). We could not always identify precisely these works and fatwas. Therefore, in this chapter, we restrict ourselves to such cases where the author and his work are given in the original of our text, leaving the complete identification to the full publication of the document. Besides, well known *faqīh*s, for instance, Abū Hanīfa (*d*.150/767; Aleksandr Aleksandrovich Seminov *et al.* ed. *Sobranie Vostochnih rukopisey Akademii nauk Uz SSR* 11vols. (Tashkent: Akademiya nauk Uzbekiskoi SSR, 1952–1987), 4:169, No 3027; Carl Brockelmann, *Geschichte der arabischen Litteratur*, 2vols. [Leiden: E.J. Brill, 1943–1949] 1:176–77), a lot of well known authors from Central Asia appear in the documents, for instance Abū al-Ḥasan ʿAli b. Muḥammad al-Nasafī al-Pazdavī (*d*.482/1089; Brockelmann, *Geschichte*, 1:460; Seminov *et al.* ed. *Sobranie*, 4:187, No 3047), Muḥammad b. Aḥmad b. Abū Sahl as Sarakhsī (*d*.495/1101; Brockelmann, *Geschichte*, 1: 460–61) and others.

5 *al-samaʿ fardun wa Sunnatun wa bidʿatun: fardun li-l-ʿāshiqīn wa Sunnatun li-l-muḥibbīn wa bidʿatun li-l-munāfiqīn.*

6 In Ramadan this prayer (*tarvīḥ*) is read every night; it consists of 20 *rakʿats*.

7 As far as it is known up to now, this work has not been found. Below, other works by this author will be mentioned.

8 . . . *mustajmiʿ ba-jāmiʿ chahār tarīqah*. . . . Usually, *chahār ṭarīqah* means Yasaviyyah, Kubraviyyah, Tayfuriyyah/ʿIshqiyyah and Naqshbandiyyah in Central Asian Sufi texts.

9 *Īn masʾalah dar Tanbīh al-Żallīn ast.*

10 References to *al-Hidāya* by Burhān al-Dīn ʿAlī b. Abū Bakr al-Marghīnānī (*d*.593/1197; Brockelmann, *Geschichte*, 1:466–67; Seminov *et al.* ed. *Sobranie*, 4:217, No. 3083), commentaries to this composition (*ʿInāya*) and other hanafite works.

11 *Al-Khidr* (or *al-Khadir*) in Arabic, *Khiẓr* in Persian. According to the late tradition, the invisible spirit of this legendary Prophet initiated and taught many Sufi shaykhs. See: R. Rahmonov, "Khidr," in *Islam na territorii bivshey Rossiyskoy imperii. Encyclopedicheskiy slovar'* (Moskva: Vostochnaya lit-ra, 1999) 91–93.

12 About this angel see: A.S. Wensinck, s.v. "Isrāfīl," *Encyclopaedia of Islam*, New ed.

13 We used the copy (written in 950/1543–1544 in *nastaʿlīq* script) at al-Beruni Institute of Oriental Studies; MS. inv. No. 7132, fol. 132b–133a. Good state of preservation.

14 In some cases, it was not possible to discern the years of the seals due to the illegibility of the impressions.

15 *Akramu al-aʿlā aʾimma al-islām (raḍiya Allāh taʿālā ʿanhum!), dar īn masʾala kih jamʿī az darvīshān dar makān-i ẓāhir jamʿ shudah ẕikr ba-ṭarīq-i jahr va ʿalāniyyah mī khānand, tā dil rā narm kardand va zang va dāgh va ḥijāb'hā-yi ān rā bardārad* . . .

16 The way in which God's names (most frequently, it simply is *huwa* – He) are recited in the Yasavi dhikr reminds the listener of the sound which is produced in the sawing of firewood. Hence the name of this dhikr – *dhikr arra* (lit. dhikr of the Saw).

17 *Har chand īn dhikr az īn darvīshān ba-ṭarīq-i arra ṣādir shudah bāshad chūn-kih ḥażrat-i Nabīy-nā (ʿalayhi al-ṣalavāt va al-salām!) maʿa jamʿ-i asḥāb-i karamī (raḍīya Allāh taʿālā ʿanhum!) dar kūh-i Ḥirāʾ ẕikr-i arra rā kardah būdah-and.*

18 *Agar kasī az rāh-i bi-khirad va nādānī ẕikr-i jahr-i maẕkūr rā va yā ḥālat-i darwīshān-i ẕikr-i maẕkūr rā bidʿat guyān manʿ āyad, dar īn ṣūrat īn manʿ az īn kas az ghayr-i ḥujjat-i sharʿat nā masmūʿ va nā muʿtabar-i sharʿī-i sharīf mishavad.*

19 An *irshād-nāmah* is a special document which a master hands over to his most prepared deputies (*khalīfah*) giving them permission (*rukhṣat*) to take on their own disciples. Usually a chain of a spiritual succession (*silsilah*) is given in the *irshād-nāmah*. As a rule, the *silsilah* is traced to one of the Prophet's caliphs, thus emphasizing the legitimacy of the tariqa in question.

20 See about him: Seminov *et al.* ed. *Sobranie*, 8:290.

21 This work on *fiqh* in Persian (which in itself is a rather rare occurrence, as almost all works of this kind are in Arabic) was written in Samarqand. For descriptions of available manuscripts, see Seminov *et al.* ed. *Sobranie*, 8:309–313 No. 5870, 5871, MS No. 7177/III, 8675). The fatwa about *dhikr jahr*: ms 7177/III, fol. 143b–144a.

22 We failed to identify the full name of this *faqīh*.

23 Najm al-Dīn Abū Hafs ʿUmar b. Muḥammad b. Aḥmad b. Luqmān al-Nasafī al-Maturīdī (*d.*537/1142: Brockelmann, *Geschichte*, 427; Seminov *et al.* ed. *Sobranie*, 4:328, No3264).

24 *Har masʿalah kih* "*mukhtalif fī-hā*" *bashad musulmanī bi-ān ʿamal namāyad muḥtasib rā na-mī rasad manʿ-i ān*.

25 Compiled by Ḥasan b. Mansur al-Uzjandi al-Farghani (*d.*592/1196; Seminov *et al.* ed. *Sobranie* 4:206, No.3074).

26 Evidently, in Mawarannahr and Turkistan.

27 This man left two different impressions of seals on the document (see the legend of the second seal in the same copy).

28 Language, Chaghatai and Arabic, author, Ishaq b. Hazrat Ismaʿil-Ata. The work is supposed to have been written not earlier than the end of the fourteenth century, and as far as known, it has not been described in catalogues so far. We use the Beruni MS No. 11838 (copied approximately in the middle of the eighteenth century).

29 Another work (not dated so far) Persian written by a Yasavi author is *Risālah-i Ḥisām al-Dīn Sighnāqī*, where the main subject also is *dhikr jahr* (in particular, in its *chahār-żarb* "four-beat" variety), *samaʿ* and *raqṣ* and the participation of women in these rituals (Beruni MS No. 11084, fol. 11b–14a). The author, while claiming the legitimacy of these rituals, does not try to justify it.

30 An example from the life of Abu Bakr Siddiq is given here. He forbade the use of percussion instruments; however, according to this *rivāyat*, the Prophet removed this ban.

31 Mawlānā Fakhr al-Dīn ʿAlī b. Ḥusayn Vāʿiz Kāshifī, *Rashaḥāt ʿAyn al-Ḥayāt*. ed. ʿAlī Aṣghar Muʻīnīyan. (Tehran: Bunyad-i Nikukari-i Nuriyani, 2536/1977), 1:32–33, 59–61. The author particularly insists that some shaykhs of the Naqshbandiyyah brotherhood before Bahaʾ al-Din Naqshband (*d.*1389) had been practicing the vocal dhikr (see in more detail: Jülgen Paul. *Doctrine and Organization. The Khwajagan/*

Naqshbandiyah in the First Generation after Baha'uddin [Anor – I. Halle/Berlin: Das Arabishe Buch, 1998], 20–26).

32 See, for instance, his treatises: *Risālah-i Sama'iyah* (Beruni MS 501/II, fol. 13b–32b; brief description – Seminov *et al.* ed. *Sobranie*, 3:301, No. 2519); *Risālah-i Bāburiyyah* (ms 501/XXV, fol. 272a–276b; brief description – Seminov *et al.* ed. *Sobranie*, 3:311, No. 2529).

33 About this work and its author, see Seminov *et al.* ed. *Sobranie*, 3: 354, Beruni MS 495.

34 See about him in more details: Paul, *Doctrine and Organization*, 27–28.

35 The texts of this fatwa (on the basis of several manuscripts) is presently being prepared for publication by Professor J. Paul. We used the earliest copy, Beruni MS 3010/X, fol. 179a–1186a).

36 See Paul, *Doctrine and Organization*, 27–28.

37 Beruni MS 7132.

38 The author speaks mainly about a special ritual *vird* (= recitation of the praying formulas in use in a given brotherhood), held after morning prayers (*namāz-i bāmdād*). This ritual, according to the text, also included vocal pronunciation of the *tasbīḥ* formulas (Beruni MS 7177/III, fol. 143b–144a).

39 See a detailed description of this work and some information about its author: Seminov *et al.* ed. *Sobranie*, 8:309–313; MS No 5870, No 7177; 3:309–310.

40 See some information on Mujaddidi activities in Mawarannahr: Bakhtiyar Babadzanov, "On the History of the Naqshbandiyyah-Mujaddidiyyah in Central Mavara'annahr in the late 18th and Early 19th Centuries," in: *Muslim Culture in Russia and Central Asia from 18th to the early 20th Centuries*, ed. M. Kemper, Anke v. Kügelgen, and D. Ermakov. (Berlin: K. Shwarz, 1996) 385–413, and more in detail in: Anke v. Kügelgen, "Die Entfaltung der Naqshbandiya Mujaddidiya im mittleren Transoxanien vom 18. bis zum Beginn des 19 Jahrhunderts: ein Stück Detektivarbeit." In *Muslim Culture in Russia and Central Asia* ed. Kemper, Kügelgen, and Frank, 106–154.

41 Measures of "cleansing and reviving" religion undertaken by Shah-Murad and his circle have been brilliantly described and interpreted in the article by Kügelgen "Die Entfaltung" 105–133.

42 *Fatāwā-yi Ahl-i Bukhārā*. Beruni MS 5804 (Description in Seminov *et al.* ed. *Sobranie*, 8:332–335, No. 5886–89).

43 MS 5804 (without pagination), *Kitāb al-Ṣalawāt.*

44 Kügelgen, "Die Entfaltung," 103, 116–117, especially 120–122, 126.

45 Ibid. 121–122 and further. However, some Mudjaddidi shaykhs (or shaykhs with multiple affiliations, being Mujaddidis alongside other *silsilah*s) did not reject the vocal *dhikr* and even practiced it themselves (Majẓūb Namanghānī, *Taẕkirah-ʾi Majẓūb Namanghānī*. Beruni MS 2622, fol. 28b; Babadzanov "On the History," 408–411; Kügelgen, "Die Entfaltung," 121–123).

46 Professor Anke v. Kügelgen reasonably suggested that Shah-Murad's struggle against the supporters of the vocal dhikr did not last long and that later on, he became more inclined to compromise as the danger of confrontation remained with a considerable number of distinguished people in whose eyes the forbidden rituals remained more attractive. (Kügelgen, "Die Entfaltung," 129–130).

47 Shaykh Khudaydad gives the list of his compositions (about 20) in his massive (984 fol.) commentary on *Irshad al-Murīdīn*, a work by Abū al-Najīb al-Suhrawardī (*d.*32/1234): MS 2406 (not catalogued so far), fol. 1a. Detailed descriptions of two works by this author (*Pisand-i Ẕikr-i Jahr* and *Bustān al-Muḥibbīn*) included in this copy which contain mainly justifications of Yasavi rituals (particularly, *dhikr jahr*) will be included in the mentioned catalogue, see Note 1. And there is a reference to another

work by the same author – *Tanbīh al-Żāllīn* (document 2 in theroll featured in this chapter

48 These compositions (or records about them) were discovered during while cataloguing Sufi manuscripts from the eighteenth to the beginning of twentieth centuries in the collections of the Beruni Institute.

49 Kügelgen, "Die Entfaltung," 132–133.

4

MAJMŪʿAH'HĀ: IMPORTANT AND UNKNOWN SOURCES OF HISTORIOGRAPHY OF IRAN DURING THE LAST SAFAVIDS

The case of *Majmūʿah-i Mīrzā Muʿīnā*[1]

Mansur SEFATGOL

I

Owing to the establishment of the Safavid state, Iranian society witnessed many changes in the political, social, economic, religious and, in my opinion, literary and historiographical spheres. These important changes were significant for the political and religious structure, for the beginning of Safavid rule marked the beginning of a new era in Iranian society, affecting all aspects of the life in Iran.

A change in the method and theory of historiography and literary style was one of the main changes in this period. During the later part of the Safavid period, a strong desire arose for preparing source material known as *majmūʿah,* or sometimes *jung*, a kind of source material still mostly unknown and to which scholars have not had access. Its information, despite its importance, is unknown to Safavid researchers.[2]

The sources discussed below are important but unknown sources belonging to later Safavid studies. Scholars usually emphasize the chronicles of the Safavid historians and sources written by European travelers or official envoys, all of which contain valuable information from different perspectives. Most of the sources, of course, belong to the late sixteenth and seventeenth centuries.[3] Both Iranian histories and the archival documents and Western works cover mainly that period; unfortunately, the last years of Safavid rule, the reigns from Shah Sulayman to Shah Tahmasb II, do not have many sources. Some histories from this period, such as *Dastūr-i Shariyārān*[4] and *Zubdat al-Tavārīkh*,[5] have been published in Iran. However, these sources are similar to previous sources in their method and style of historiography. The scholars have not paid much attention to

introducing and publishing the archival sources, which contain a huge number of *majmūʿah*, *jung* and other kinds of Safavid documents. This constitutes a gap in our knowledge of both Safavid historiography and the history of Iran during this period, in particular the last part of Safavid rule. Another problem is that the official chronicles mainly describe political events and do not pay attention to the social and cultural life of Iranian society. In this context, then, the archival sources are useful and contain interesting and important information.

As the theme of this book is the analysis of source material for the history of Iran, my first aim is to introduce and analyse some important source material concerning the last part of Safavid rule. For this purpose, I have chosen some *majmūʿah* belonging to this period and will introduce them and demonstrate their importance through a comparative study.

II

The archival source material for the Safavid period includes many sources. Most of them, preserved in Iranian libraries, are royal, administrative and private letters, *vaqfnāmah*s, marriage contracts, deeds, ownership documents, vouchers and literary documents. Not many have been catalogued. In accordance with Iranian tradition, some of these documents are gathered together in a book entitled *majmūʿah* or *jung* or sometimes *bayāż*.[6]

The terms *majmūʿah* and *jung* describe different things. The manuscript and archival specialists usually describe a *majmūʿah* as a collection of individual essays that may be about one subject, though often about a number of different subjects. In their description a *Jung* is a collection that contains scattered written material such as selected poems, letters, etc. However in practice, this definition has some problems. For instance, Muhammad Taqi Danishpazhuh described a manuscript in the Central Library of the University of Tehran as "*majmūʿah*,"[7] but this *majmūʿah* contains various parts such as letters, religious essays, and *vaqfnāmah*. Danishpazhuh titled a part of this *majmūʿah* a "*jung*"[8] that contains selected poems. A better example of a *majmūʿah* is another manuscript in the library. This *majmūʿah* contains nine essays, all on religious subjects and written by Mulla Muhammad Tahir Qummi.[9] Other examples are a *majmūʿah* entitled *al-Safinah* belonging to the years 1068–1090/1655–1677[10] and a *majmūʿah* by a poet with the pen name of Tahsin written in the year 1101/1688.[11] All of them contain copies of some Safavid royal letters,[12] and sometimes private letters.[13]

During the reign of the Safavids, especially during the later part, many *majmūʿah*s were written and gathered by scholars, poets and notables who had relations with poets and the Ulama. I have chosen from these *majmūʿah*s and will concentrate on one of them. The three *majmūʿah*s are: *Majmūʿah-i Findiriskī*, *Jung-i Aḥmad-i Ghulām*, and the main topic of this chapter, *Majmūʿah-i Mīrzā Muʿīnā*. I have chosen the first two to show the importance of information found in *majmūʿah*s and to compare this information to the *Majmūʿah-i Mīrzā Muʿīnā*. All of them belong to the last part of the Safavid rule.

Table 4.1 Contents of the *Majmūʿah-i Findiriski*

Contents	
Book	1 (*Tuḥfat al-ʿĀlam*)
Letters	12
Royal orders	3
Fatwa	1
Jung-poem	28
Religious essays	4
Genealogies	1
Private letters	6

One of the most important *majmūʿah*s from the last years of the Safavids is the *Majmūʿah-ʾi Findiriskī*,[14] preserved in the Central Library of the University of Tehran. This *majmūʿah* contains sixty-six sections, made up of essays, royal and administrative letters, royal decrees, selected poems and four chronologies of the conquest of Hyderabad in India by the Mughals. (See Table 4.1.)

This *majmūʿah* is very important for the historiography of the reign of Shah Sultan Ḥusayn. Although the main topic of Findiriski's writings is literature, his work also includes important and unknown sources for the early years of Shah Sultan Husayn. This is a book in the *majmūʿah* titled *Tuḥfat al-ʿĀlam*.[15] In *Tuḥfat al-ʿĀlam*, Findiriski describes the events of the first two years of the reign of Shah Sultan Husayn, portraying him as a clever and ambitious ruler who decided to improve the running of the court and the administration as well as the social life of Iranian society. We do not find such valuable information in any other sources.

Another important *majmūʿah* , belonging to the last years of the Safavid rule, until 1142/1730, is the *majmūʿah* or, according to ʿAbd al-Husayn Haʾiri, *Jung-i Aḥmad-i Ghulām*.[16] This *jung* also contains important information. Ahmad-i Ghulam was the librarian of the Safavid Royal Library in Isfahan during the reign of Shah Sultan Husayn. Since he lived and worked during such a crucial period, he witnessed the fall of Isfahan. His life after the collapse of Isfahan was troubled by confusion in Iranian society. According to a date in his *majmūʿah*, it seems he was alive in 1142/1730, when Shah Tahmasb II and Tahmasb Quli, later Nadir Shah, ejected Ashraf Afghan from Isfahan. (See Table 4.2.)

From the historical point of view, this source contains some unique reports. Ahmad-i Ghulam, who himself experienced the effects of the collapse of Isfahan, mentions the situation of the city during this period. For example he says, "alas, Isfahan, the city is like a dead sea and all the fish are between death and life. The enemy of religion has captured it because there was no strong ruler."[17] This note was written in 1138/1725. In another place he says,

> I have written a transcription from *Nuzhat al-Mushtaq*, written by Idrisi, and I am Ahmad-i Ghulam, an official of the treasury of the king, at the time, when Almas, the slave of the invaders, plundered the houses of the

Table 4.2 Contents of *Jung-i Aḥmad-i Ghulām*

Subjects	*Amount*
Royal, administrative and private letters	83
Vaqfnāmah	3
Royal decrees	2
Economic reports	10
Travelogue (*Safarnāmah*)	1
Historical chronicles	3
Historical description and report about the Situation of Iran after the fall of Isfahan	3
Fatḥnāmah	4
Selected poems	13
Marriage contracts	1
Peace agreements	2
Tuyūlnāmchah	4

people and divided the spoils among his followers. For the owners of these houses were killed by famine or murdered by invaders, but I was alive and in the place between death and life in the year 1135/1722.[18]

At the end of the Jung he wrote, "in Rabiʿ I 1137/1724 when Mahmud had gone to the Yazd and decided to seize the city, I wrote this section in Isfahan. Isfahan is the city of women, because in all parts of the city there are no men, and you can only see the women who survived."[19]

In addition to these historical descriptions, this source contains a copy from *Taẕkirah-i Shāh Ṭahmāsb*.[20] This *taẕkirah* has some differences from the published version.[21] Also there is an important *risālah*, *Risālah-i Alqāb* or *Ẕayl-i Risālah-i Alqāb*,[22] written by Muhammad Riza ibn ʿAbd al-Husayn Tusi. I think that this *risālah* was the source for the unknown author of the *Taẕkirat al-Mulūk* and perhaps the book of *Alqāb va Mavājib-i Dawrah-i Salāṭīn-i Ṣafaviyyah*.[23] The *majmūʿah* also includes a travelogue from the year 1129/1716 written by an Iranian official who describes in the first person his pilgrimage to Mecca.[24] Some economic bills belonging to the Safavid state and also some *vaqfnāmah*s are included.

Next I introduce and analyse another *majmūʿah* belonging to the reign of Shah Sultan Husayn Safavi and then compare the contents of these three *majmūʿah*s as examples of these many sources, most of which remain unknown.

Majmūʿah-i Mīrzā Muʿīnā

Another important but unknown *majmūʿah* from the last years of Safavid rule is *Majmūʿah-i Mīrzā Muʿīnā*.[25] We do not know about Mirza Muʿina in detail. It seems he was a prominent Safavid official in Urdubad. This is clear from his

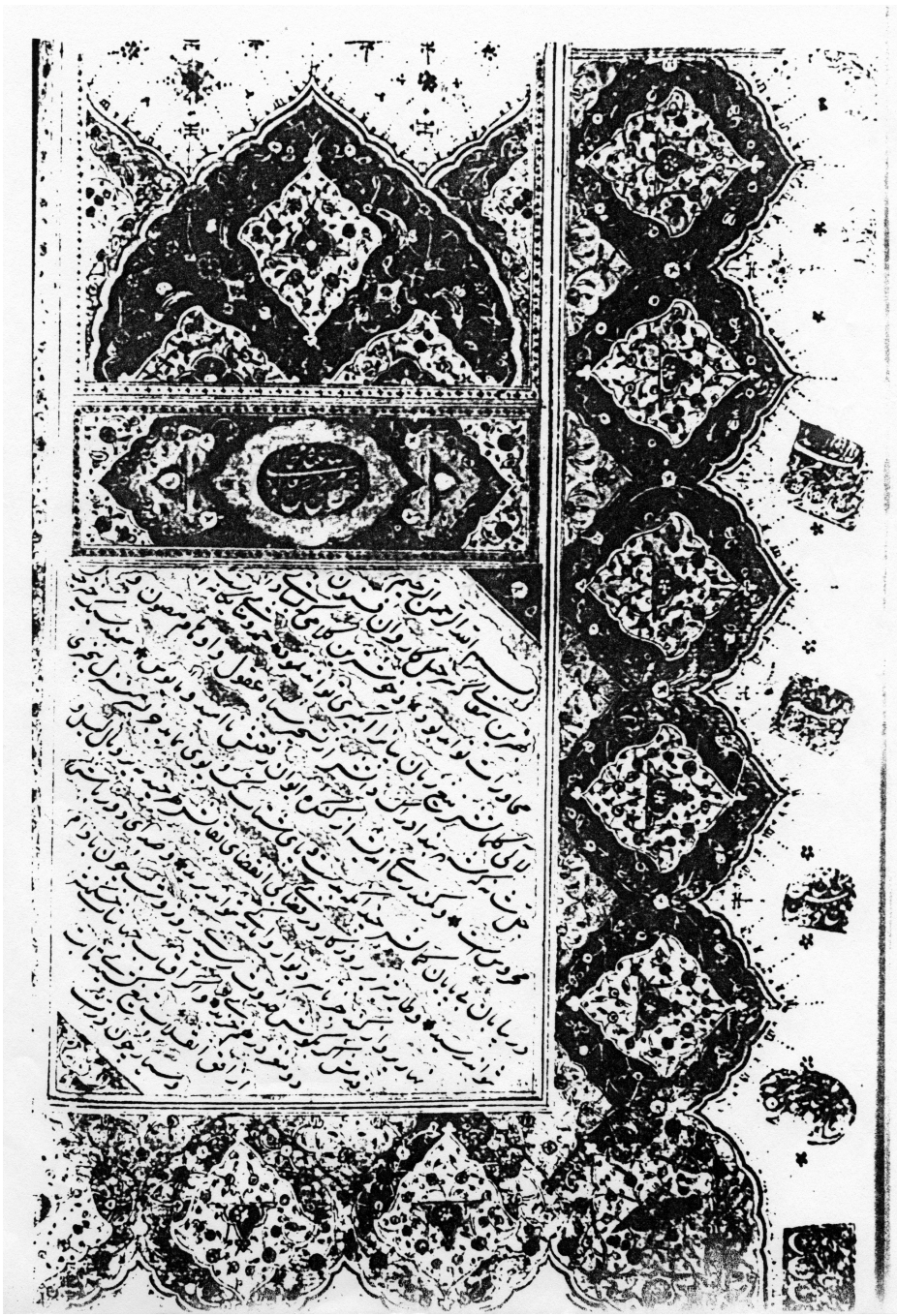


Figure 4.1 Majmūʿah-i Mīrzā Muʿīnā

name: Mirza Muʿina Urdubadi. In fact his name is Muʿin, but according to a Safavid custom the title of *āghā* after the names of officials was abbreviated to "*ā*": hence Mirza Muʿina was Mirza Muʿin Agha.

Majmūʿah-i Mīrzā Muʿīnā is a voluminous manuscript preserved in the manuscript section of the Central Library of the University of Tehran and is one of its most precious manuscripts, not only for its contents but also from an artistic point of view. The contents of *Majmūʿah-i Mīrzā Muʿīnā* are presented in two sections, according to the technical terms of the specialists. These two sections are *matn* and *ḥāshiyah* (text and marginalia). This was a custom in Iranian writing style: writers and authors usually used all the space of a sheet of paper. It was the custom also that they wrote both *matn* and *ḥāshiyah*. But that does not mean that the value of the contents in *matn* was greater than that in the *ḥāshiyah* in *Majmūʿah-i Mīrzā Muʿīnā*. Those contents in the margin are as valuable as the *matn*.

The *Majmūʿah-i Mīrzā Muʿīnā* includes 180 topics in the *matn* and 186 in the *ḥāshiyah*.[26] It also includes some important *risālah*.[27] The contents of the *majmūʿah* are in Table 4.3.

Majmūʿah-i Mīrzā Muʿīnā begins with an introduction from a writer whose name was Muhammad Sadiq. He wrote this *dībāchah* on 16th Jumada II 1109/1696.[28] Then, there is a list of the contents that Mirza Muʿina wrote himself.[29] In his *dībachah*, Muḥammad Sadiq says that Mirza Muʿina asked him to write an introduction to his *majmūʿah*, and therefore he wrote this *dībāchah* in the belletristic style of Persian during the reign of the last of the Safavids.[30] As mentioned above, the contents of the *majmūʿah* are presented in two sections. Both contain literary introductions (or *dībāchah*), royal decrees and orders, official and private letters, economic materials, individual essays that sometimes

Table 4.3 Contents of *Majmūʿah-ʾi Mīrzā Muʿīnā*

Contents	*matn*	*ḥāshiyah*	*Total*
Royal, administrative and private letters	71	85	156
Royal orders and decrees	9	15	24
Dībāchah-hā and literary composition	19	16	25
Selected poems	68	42	110
Books and essays			5
Economic reports and materials			12
Peace treaties			1
Sūrat-i Maḥżar (reports of the conversion of six Armenians)			1
Travelogue			1
Azādnāmchah (letter relating to the manumission of a slave)		1	1
Chronology of historical events			4
Religious Fatwa			1

are presented as a book, chronology of historical events during the reign of Shah Sultan Husayn, and selected poems. Much of the material in the *majmūʿah* is very significant for the study of political and social life in Iran under the last Safavids, especially the city of Isfahan during this period. According to the catalogue classification, Persian letters as archival documents are classified as royal letters or administrative and private letters. In *Majmūʿah-i Mīrzā Muʿīnā* all three kinds are present.

For a better study of the contents of the *majmūʿah* and to aid my introduction, I will describe the importance of the contents of the *majmūʿah* in four ways:

1 Political and dynastic value of the *majmūʿah*
2 Social and economic value
3 Religious importance
4 Value for Persian literature

For the dynastic and political history of Iran during Safavid rule, *Majmūʿah-i Mīrzā Muʿīnā* is a major source. There are many official letters, which are important for the study of foreign and domestic relations of the Safavid state with the Ottomans, Mughals, and Uzbeks, as well as with the notables and governors of Iran. Above all, what makes this *majmūʿah* more significant for study of the political situation is the interesting information about the reign of Shah Sultan Husayn. I have mentioned before that we do not have many Iranian sources, published or unpublished, about this period; thus, any new source is important. We do know that during the reign of Shah Sultan Husayn, uprisings against the Safavid state occurred. One of the most important of these uprisings was the movement of Kurdish leader Sulayman *Baba*, or *Bābā.* In an account written by Bayandur Khan, governor or *ḥākim* in Qarachah Dagh, during this period, he describes the war between the Safavid army and the rebels.[31] This report is important because it shows the situation of the western borders of Iran during this period. Also, Mirza Mohammad Baqir, an official in the Safavid army (he was the *lashkarnavīs*) wrote an account for Mirza Muhammad Rahim, the Safavid Vazir in Chukhursaʿd, Iravan (Yerevan), on 25 Jumada II 1114/1707, describing this area.[32] There is also a chronology of Iranian history written by Mirza Muʿina himself. This short chronology contains the names and dates of the reigns of those who ruled Iran from the beginning of the Islamic period to the reign of Shah ʿAbbas II.[33]

For the social and economic history of Iran, *Majmūʿah-i Mīrzā Muʿīnā* also contains valuable information. Many private letters and literary descriptions show us the conditions of life in Iranian society. For example, we can consider *Munshaʾāt-i Shīrīn-i Ijāzah Harātī*,[34] who was in Isfahan during the last years of Safavid rule, a significant source for social life in the Safavid capital. Harati, in his literary description, describes the situations of the two main districts (*maḥallah*) of Isfahan, namely Jubarah and Dardasht. He explains the situation of the baths, *qahvahkhānah* and gardens of these two districts and their people.[35]

In addition, a woman in the Safavid court wrote an important travelogue (*safarnāmah*).[36] This is interesting because usually we do not know much about learned women during Safavid rule. This woman was the wife of Mirza Khalil, who was *raqamnavīs* (a kind of secretary) in the Safavid court. She describes in her travelogue her pilgrimage from Isfahan to Mecca.[37] Also there is an *āzādnāmchah* about the manumission of a slave.[38]

From the religious point of view, *Majmūʿah-i Mīrzā Muʿīnā* has some important religious essays, also some royal orders and decrees about the Holy Shrines. One of the most important and, in my opinion, rare documents in this *majmūʿah* is a *ṣūrat-i maḥżar* or *ṣūrat-i majlis* (process-verbal) about the conversion of six Armenians. As far as I know, scholars have not yet used such documents for a description of the process of conversion during the last Safavids. Therefore this *ṣūrat-i maḥżar* is very significant. According to the text, an Armenian, Awuhan of Eklisi, and five others converted to Islam, and Awuhan chose the name of Muḥammad ʿAlī. This occurred in 1117/1704 in Urdubad. During the process of conversion, *sayyid*s, ulama and notables were present. The *ṣūrat-i maḥżar* shows that they had to obey Islamic traditions and to go to a mosque.[39]

No doubt, *Majmūʿah-i Mīrzā Muʿīnā* is very important for Persian literature because there are many selected poems, as well as other passages that show the evolution of Persian prose. These writings will add much to an understanding of the literary history of Iran.[40]

Finally I compare the contents of the *Majmūʿah-i Mīrzā Muʿīnā* with the two other *majmūʿah*s already mentioned. Because preparing *majmūʿah*s was a custom among learned people during the last years of Safavid reign, the contents of a *majmūʿah* were affected by political and cultural circumstances. Table 4.4 shows a comparison.

A comparison among the three *Majmūʿah*s shows that each of them is important for Safavid historiography. Chronologically, one can consider these three *majmūʿah* as follows:

1 *Majmūʿah-i Findiriskī*, beginning 1104/1696
2 *Majmūʿah-i Mīrzā Muʿīnā*, beginning 1109/1696
3 *Majmūʿah-i Aḥmad-i Ghulām*, covering the last years of the Shah Sulṭān Ḥussyn until 1142/1730

Majmūʿah-ʾi Mīrzā Muʿīnā alone of these three *majmūʿah*s belongs to the golden years of the reign of Shah Sultan Husayn. It is enriched with royal and administrative letters, some essays and selected poems. But it seems *Jung-i Aḥmad-i Ghulām*, written during the confusing years of the fall of Isfahan, differs in both structure and contents from the other two *majmūʿah*s. Selected poems in this Jung are fewer than in the other two, and the contents are serious in context. Ahmad-i Ghulam is a sad writer.

From the Safavid historiographical point of view, the contents of these sources have another significance. They help the researcher to rewrite the history

Table 4.4 Comparative table of contents of the three word *majmūʿah*s

Subject	*Muʿīnā*	*Jung-i Aḥmad-i Ghulām*	*Findiriskī*
Letters	157	83	18
Royal orders, decrees	24	2	3
Dībāchah and *Munshaʾāt*	26		
Essays (Safavids)	5	3	1
Religious essays			4
Economic reports			4
Travelogue	2	1	1
Peace agreements	1	2	
Vaqfnāmah		3	
Genealogy			1
Selected poems	110	13	28
Fatwa	1	1	
Ṣūrat-e Maḥżar	1		
Āzādnāmchah	1		
Tuyūlnāmchah	1	2	

of the last Safavid, because most of the studies of this period are, in my opinion, "history of the collapse" not "the history of Iran." Therefore, sources like these *majmūʿah*s are of the utmost importance from a comparative and comprehensive perspective.

On the other hand, rethinking the Safavid history of Iran is a necessity. This will occur only when historians, to present a new picture of the Safavid period, use all the sources, including these *majmūʿah*s.

Notes

1 This chapter was first presented as a lecture at the Institute of Oriental Culture, University of Tokyo, in a one-day workshop on Persian Archival Sources. I wish to thank Professor Tsugitaka Sato, the University of Tokyo for his generous invitation to come to Japan as the guest of the Islamic Area Studies Project, and Dr. Nobuaki Kondo, Tokyo Metropolitan University, for his care in arranging my visit. I benefited greatly from the comments of those attending the workshop, in particular Professor Masashi Haneda. Thanks also to Mr. Kazuo Morimoto of the Institute of Oriental Culture. Also I wish to thank Dr. Robert Gleave of the Department of Theology and Religious Studies of the University of Bristol, England, for his kind attention and assistance to prepare the tables in this chapter.

2 One of the few exceptions is the article of Professor Iraj Afshar, "*Majmūʿah*s and *Maktūb*s, as Essential Sources for Safavid Research," in *The Proceedings of the Third International Round Table on Safavid Persia held at University of Edinburgh, 19–22 August 1998* (forthcoming). Professor Afshar pointed out, "Most published studies about the Safavids are based on Persian historical texts and European Travelogue Sources. Rarely are some of the separated documents used." He explains in his article

the importance of *maktūb*s and other contents of *majmūʿah*s and *bayāż*s, which are hidden and forgotten historical, social and economic or cultural sources.

3 Recently a special issue of *Iranian Studies* has been published, a development from a panel titled "Legitimacy and Representation in Early Modern Iran," which was held at the 1996 Middle Eastern Studies Conference at Providence, USA. The title of the issue is *Historiography and Representation in Safavid and Afsharid Iran*. It shows that the analyzer of archival materials does not receive much attention. See Rudi Matthee (guest editor) *Iranian Studies* 31:2 (1998).

4 Muḥammad b. Ibrāhīm Naṣīrī, *Dastūr-i Shahriyārān*, ed. Muḥammad Nādir Naṣīrī Muqaddam, (Tehran: Mawqufat-i Afshar, 1373/1995).

5 Muḥammad Muḥsin Mustawfī, *Zubdat al-Tavārīkh*, ed. Bihrūz Gūdarzī, (Tehran: Mawqufat-i Afshar, 1375/1997).

6 In English, terms like "miscellany" or "miscellaneous collections" are both sometimes used for *majmūʿah*, *jung*, *bayāż*. But they are neither sufficient nor suitable for my definition here.

7 Muḥammad Taqī Danishpazhūh, *Fihrist-i Nuskhah'hā-yi Khaṭṭī-i Kitābkhānah-i Markazī-i Dānishgāh-i Tihrān*, vol. 9 (Tehran: Danishgah-i Tihran, 1340/1961),1188. MS no.2454.

8 Ibid., 1190.

9 Ibid., 1246–1250.

10 Ibid., 832–838.

11 Ibid., 1187.

12 MS no. 2545: letter no. 8, 114 and letter no. 14, 127–129.

13 Dānishpazhūh, *Fihrist*, 1189. Letter no. 14, from Muhammad Tahir Vahid Qazvini to Mulla Muhammad Baqir.

14 Findarskī, *Majmūʿah-i Findarskī*. Central Library of University of Tehran MS no. 2465. For bibliographical details of this manuscript, see Dānishpazhūh, *Fihrist*, 1213–1218.

15 *Tuḥfat al-ʿĀlam* is yet to be published. For an analysis of it, see Manṣūr Ṣifat-gul, *Sākhtār-i Nahād-i va Andīshah-i Dīnī dar Īrān-i ʿAṣr-i Ṣafavī* (Tehran: Rasa, 1381/2002).

16 Aḥmad-i Ghulām, *Jung-i Aḥmad-i Ghulām*. Kitābkhānah-i Majlis-e Shawrā-yi Islāmī MS no.3455. For bibliographical details of this manuscript, see ʿAbd al-Ḥusayn Ḥāʾirī, *Fihrist-i Kitābkhānah-i Majlis-i Shawrā-yi Millī*, vol. 10 (Tehran, 1348/1969) 1334–1385.

17 Aḥmad-i Ghulām, *Jung*, 101.

18 Ibid., 345–346.

19 Ibid., *Jung*, 457.

20 Ibid., *Jung*, 1373–1375.

21 Shāh Ṭahmāsb I, *Taẕkirah-ʾi Shāh Ṭahmāsb*, ed. Amrullāh Ṣafarī (Tehran: Sharq, 1363/1985).

22 Aḥmad-i Ghulām, *Jung*, 356–357.

23 Yūsuf Raḥīmlū ed. *Alqāb va Mavājib-i Dawrah-i Salāṭīn-i Ṣafavīyah* (Mashhad: Mashhad University Press, 1371/1993).

24 Aḥmad-i Ghulām, *Jung*, 347. This travelogue belongs to Żiyā al-Dīn Āl-i Kayvān Qārī, but the scribe was Ahmad-i Ghulam.

25 Mīrzā Muʿīnā, *Majmūʿah-i Mīrzā Muʿīnā*, Central Library of the University of Tehran, MS no. 2591. For details of this manuscript, see Dānishpazhūh, *Fihrist*, 1395–1423.

26 Dānishpazhūh divided the contents as *matn* (fol. 1–811) and *ḥāshiyah* (fol. 1–533).

27 These *risālah*s are: An essay on the music or *Risālah-i mūsīqī-i fārsī* (fol. 402–413); *risālah* on Firework or *Risālah-i majmūʿāt al-ṣanāyeʿ dar ātashbāzī* (fol. 458–469);

risālah on blasphemy and the faith written by ʿAbd al-Vahhāb ibn ʿAbd Allāh Nusayrī in 1139/1726; The travelogue of pilgrimage to Mecca by the wife of Mirza Khalil (fol. 764–779); another *risālah* on Music (fol. 792–797) and a chronological history of Iran written by Mirza Muʿina in 1070/1675 (fol. 800–810).

28 Mīrzā Muʿīnā, *Majmūʿah*, fol. 1–2.
29 Ibid., fol. 3–10.
30 Ibid., fol. 1–2.
31 Ibid., fol. 390–394.
32 Ibid., fol. 387–390.
33 Ibid., fol. 800–811.
34 Ibid., fol. 76–87.
35 The description by Harati is significant because the baths (*ḥammām*s) and *qahvahkhānah*s were public places during the Safavid rule, and we can consider this as a report about social life in Isfahan in this period.
36 Mīrzā Muʿīnā, *Majmūʿah*, fol. 764–779.
37 See Rasūl Jaʿfariyān ed. "Safarnāmah-ʾi Manẓūmah-i Zawjah-i Mīrzā Khalīl," in Rasūl Jaʿfariyān ed. *Mīrāṯ-i Islāmīyah-i Īrān* vol. 9 (Qum: Marʿashi Najafi, 1377/1999) 337–391.
38 This *āzādnāmchah* or release letter of a slave was issued for a slave whose name was Mukhliṣ. Mīrzā Muʿīnā, *Majmūʿah*, fol. 311.
39 Ibid., fol. 331.
40 In addition to those poems and prose writings, it contains 32 *qaṣīdah*s. Mīrzā Muʿīnā, *Majmūʿah* fol. 471–533.

Part III

WAQFS

5

THE WAQF OF A TIMURID AMIR

The example of Chaqmaq Shami in Yazd*

IWATAKE Akio

Yazd, in central Iran, retains much of its traditional townscape. In the central part of the present city area (to the south of the old city) lies a *masjid-i jāmiʿ* (congregational mosque), the Masjid-i Mir Chaqmaq.[1] The person who gave his name to the masjid, Nizam al-Din Chaqmaq b. Jalal al-Din Pur Timur Shami, was an amir active in the region of Yazd during the time of the Timurid ruler Shahrukh (*r.* 1409–47).[2] The waqf deed whereby he set up the masjid exists; it has been edited and published in a form so that it may be utilized.

The prime purpose of this chapter is to discuss the activities of an amir in the regional city of Yazd through a particular waqf deed. This analysis will, it is hoped, prove beneficial in throwing light on the nature of urban society during the Timurid period.[3]

I

Chaqmaq Shami was in Damascus as a Mamluk amir. However, when Damascus was under siege by Timur and the Mamluk sultan Faraj departed the city, he surrendered to Shahrukh, son of Timur, joining the Timurid army, taking part in the battle of Ankara on the right flank of the central army.[4]

Later, after becoming an amir of Shahrukh, Chaqmaq was appointed to Yazd by him. Luckily Yazd in the first half of the fifteenth century was well endowed with historical documents. These include Jaʿfari's *Tārīkh-i Yazd* (*TY*) and *Tārīkh-i Kabīr* (*TK*), Ahmad b. Husayn's *Tārīkh-i Jadīd-i Yazd* (*TJY*), and Ibn Shihab's *Jāmiʿ al-Tavārīkh-i Ḥasanī* (*JTH*). *TY* goes to 845/1441–42, *TK* to 850/1446, *JTH* to 857 /1453 and *TJY* to 862/1458. *TY* and *TJY*[5] are gazetteers and local histories and *TK*[6] and *JTH*[7] are chronicles. All were written by residents of Yazd. Using these materials as well as chronicles of the court historians in Herat (*MF*, *MS*), we can construct a chronological table of the movements of Chaqmaq and his wife Bibi Fatimah Khatun (Table 5.1).[8]

Table 5.1 Chronology of Chaqmaq's activities

Year	*Activity*	*Sources*
803/1401	Chaqmaq surrendered to Shahrukh at the siege of Damascus	*ZNY/tx 237; /fac* 382b
804/1402	Chaqmaq joined Timur's army at the time of the battle of Ankara	*ZNY/tx* 304; */fac* 409b; *ZNS* 255
816–17/1413–14	Chaqmaq joined the first Iraq-Fars campaign of Shahrukh. He contributed to occupation of Abarquh	*TK/ tr* 59 *TK/tr* 61; *MF* 218
818/1415?	Chaqmaq was appointed to Yazd	
823–24/1420–21	Chaqmaq left Yazd to join the first Azerbaijan campaign of Shahrukh and came back the next year	*MF* 241, 219; *MS* 401
825/1422	* Chaqmaq acquired caravansary in the inner city and built a *ḥammām*	*TY* 45; *TJY* 99
830/1426–7	* Chaqmaq built caravansary, *hammām* and sugar factory in Mahallah-i Dihuq, located outside the city wall	*TJY* 99
832–33/1429–30	Chaqmaq left Yazd to join the second Azerbaijan campaign of Shahrukh and came back the next year	*MS* 604, 624
838–39/1434–36	Chaqmaq left Yazd to join the third Azerbaijan campaign of Shahrukh. He succeeded in appeasing Shah Jahan and contributed to the defeat of Iskandar Qara Quyunlu.	*TK/tri 81* *TK/tr* 86–87, 90; *JTH* 45
840/1436–7	Chaqmaq went to Manujan to aid Sayf al-Din, the ruler of Hormus.	*TK/tr* 96
840	*Chaqmaq start building a *masjid-i jāmiʿ* and *khānaqāh* in collaboration with Bibi Fatimah	*TK/tr* 97
841/1437–8	*the *masjid-i jāmiʿ*, the *khānaqāh* and the cold well were completed	*TJY* 97, 224
846/1442	Amir Hamzah Chuhrah held the governorship of Yazd at the time	*TJY* 227
846/1442	Amir Hamzah Chuhrah was dismissed, and Chaqmaq was appointed to Yazd	*TJT* 227
849/1445	*Chaqmaq and Bibi Fatimah founded a waqf Chaqmaq went to Herat and left his son Shams al-Din Muhammad in Yazd	See the next chapter
850/1446	The revolt of Sultan Muhammad Shahrukh appointed Chaqmaq to Yazd again	*TK/tx* 572; */tr* 123; TJY 237
850/1447	Shahrukh's death in the ʿIraq-i ʿAjam champaign and the start of Sultan Muhammad's rule Sultan Muhammad appointed Chaqmaq to Yazd but dismissed him after a while	*TJY* 246
855/1451	Sultan Muhammad was defeated by Abu al-Qasim Babur Babur reached Yazd and appointed Shams al-Din Muhammad to Yazd His son, Ahmad and his amir Arika became his deputy	*JTH* 69
856/1452	Ahmad, Chaqmaq's grandson, and all the other Timurid amirs retreated from Yazd Yazd was ruled by Jahan Shah Qara Quyunlu	*TJY* 266–267, *JTH* 108

Note: * Indicates the building activity of Amir Chaqmaq in Yazd.

The records do not give Chaqmaq's date of assuming office in Yazd. During the campaign of 816–17 AH, he played an active role in the domination of Abarquh;[9] directly after that a different amir, Muhammad Darvish (*TK/tr* 63; *JTH* 41), was appointed to Yazd at the same time that Ibrahim Sultan b. Shahrukh was appointed to Fars. In the autumn of 818/1415 the rebellion of Bayqara b. ʿUmar Shaykh in Fars was put down and the rule of Ibrahim Sultan was confirmed (*MF* 223; *MS* 325; *JTH* 42); at that time new appointments were made (*MF* 223; *MS* 322). (Both chronicles record in particular the appointment of Ilyas Khajah to Qum, Kashan and Ray.) Following Shahrukh's campaign to Kirman, the amir Gunashirin was appointed there after the siege and occupation of the city.[10] Ibn Shihab, who himself participated in the seige of Kirman,[11] recognized that through this appointment "Khurasan, Central Iran (*ʿIrāq*) and Mawarannahr came under the rule of Shahrukh" (*JTH* 44). In 823 AH, Chaqmaq was already in Yazd and it is very likely that his appointment there had already been made by 818 AH.[12]

Chaqmaq held governorship (*ḥukūmat*) in Yazd for close to thirty years, except sometime around 846 AH when an amir, Hamzah Chuhrah, held it.[13] During that time he participated three times in the Azerbaijan campaigns and played an important role with Gunashirin of Kirman in Shahrukh's rule over the western regions of his empire.[14] After setting up the waqf in 849 AH, he left Yazd, but returned under Shahrukh's orders to strengthen the city when Sultan Muhammad's rebellion was reported to Herat. From this we can see the close links between Chaqmaq and Yazd, and the trust that Shahrukh placed in him.

Upon his arrival in Yazd, Chaqmaq repaired the ruined Bag-i Layistan with his amirs[15] and took up residence there in the summer (*TY* 147). Later he built the *divān-khānah* and other buildings in Qalʿah-i Mubarakah,[16] or the inner citadel of Yazd, and organized the administrative organs of government (*TJY* 98).[17]

The historical records in the Yazd gazatteers give a detailed description of the building work and property management in Yazd by Chaqmaq and his wife Bibi Fatimah, rather than of his administration. Since these can be considered the most significant of his activities in Yazd, I will examine them below.

The construction of a *ḥammām* (bath) in 825 was the first of these (*TY* 45). Ahmad b. Husayn says (*TJY* 99) that

> within the *shahr* (the area within the city walls) there was a caravansary which had fallen into ruin opposite Masjid-i Jamiʿ (congregational mosque). This was a waqf property of the Rashid family (az *mawqūfāt-i Rashīdī*), and formerly merchants had sold cloth (*qumāsh*) there. The afore-mentioned amir acquired it by means of a long lease (*bah ijārah-i ṭavīl*), tore it down completely, and made a fine *ḥammām*.

This caravansary was recorded as a waqf property of Rabʿ-i Rashidi endowed by Rashid al-Din, a well-known wazir.[18]

Next, in 830 AH, Chaqmaq built a caravansary and sugar factory (*qannād-khānah*) in Mahallah-i Dihuk, outside the city walls. By 840 AH a *masjid-i jāmiʿ* and a *khānaqāh* (Sufi hospice) had been built in this quarter,[19] and in 841 AH a cold-water well (*chāh-i āb-i sard*) and a waterworks were completed there.[20] At the time, this *masjid-i jāmiʿ* was known as Masjid-i Naw, the New Mosque (*TY* 79; *TJY* 97).

"Many merchants put up" (*TJY* 97) in the caravansary. There were thirty-nine rooms (*ḥujrah*) and in the entrance an arcade (*sābāṭ*) was built, and there were also ten shops (*dukkān*) (*TY* 46; *TJY* 98). There was an arcade in front of the *ḥammām*, and opposite the *masjid-i jāmiʿ* twelve shops were built with rooms above. In the sugar factory a workshop was built (*kārkhāna-yi qannādī*).[21] The *ḥammām* was for men and had a changing room (*maslakh*) and private rooms (*ḥalvat*) (*TJY* 99). Together with the cold well for drinking water, these two facilities promoted the convenience of the bazaar. All were situated in close proximity and comprised a single complex completed at the same time.

A *qanāt* (underground water channel), drawing water from Hayrabad-i Dihuk, contributed to the facilities of Mahallah-i Dihuk. This too had been purchased and provided by Chaqmaq. Concerning these, Jaʿfari noted,

> [Before, this *qanāt* had] a very poor supply [of water]. Its owners (*mālikān*) sold it to the Amir Jalal al-Din Chaqmaq and he increased the supply of water. It was available to many houses in the quarter and also to Amir Chaqmaq's caravansary, *khānaqāh* and sugar factory. (*TY* 152).

In this way, Chaqmaq and his wife played an important part in the growth of the quarter, contributing thereby to the development of the city of Yazd. After he left Yazd, he was able to entrust the governorship to his son Muhammad.[22] However, after Chaqmaq was dismissed by Sultan Muhammad, he himself disappeared from the pages of history. When he died is not known, but it is thought he had already died by 855 AH. In 856 AH the Timurids withdrew from Yazd and the family of Chaqmaq also left the historical stage for a time.

The buildings in Yazd that Chaqmaq and his wife were connected with are listed in Table 5.2.[23] He also built a madrasa in Herat which bore his name.[24] However, at the present time little is known of this building or of Chaqmaq's activities in Herat.[25]

II

The waqf deeds setting out the waqf that Chaqmaq set up have been transcribed by Afshar *et al.* Here I use three texts. I rely on the latest edition (*VNC/c*) and simply enter the page number in brackets, without any document number. The earlier editions (*VNC/a, /b*) I quote as necessary.[26]

The contents of the text are as follows.[27]

Table 5.2 Buildings constructed by Chaqmaq and Bibi Fatimah

	Area	*Buildings*	*Sources*
Outside the city wall	Mahallah-i Dihuk	a *masjid-i jāmiʿ* with congressional hall (*jamāʿat-khānah*) and 12 shops	*TY* 79–80; *TJY* 97, 99
		a *khānaqāh* (with water tank [*maṣnaʿah*])	*TY* 46; *TJY* 97
		a cold well (with water works)	*TY* 45–46; *TJY* 97–98
		a caravansary with arcade and 10 shops	*TY* 46–48 *TJY* 99
		a *ḥammām* with an arcade	*TJY* 99
		a sugar factory	
	Mahallah-i Sar-i Ab-i Now	a water mill called "āsiyā-yi naw" built by Bībī Fatimah	*TJY* 98
Inner city	Suq-i Kabir	a *ḥammām*	*TY* 45; *TJY* 99
	Qalʿah-i Mubaraka	a *dīvān-khānah*	*TJY* 98

1 Preface [162–68]

Here, in common with the majority of waqf deeds, the text begins with words of praise to God. Next, it records heartfelt thanks that "… Muʿin … al-Din … Shahrukh Bahadur Khan" appointed to "the city of the faith (*dār al-ʿibādah*) Yazd" "… Nizam … al-Din … al-Amir Chaqmaq b. … Jalal … al-Din Pur Timur al-Shami" and his wife "… Bibi Fatimah Khatun bt. … Shams … al-Din Amir Muhammad," the couple who were the donors (*vāqif*) [166–67]. Their pious work as *vāqif* "is based upon 'people following the religion of the ruler (*al-nāsu ʿalā dīni mulūkihim*),'" saying that it is according to the will of "the emperor of Islam (*Padshāh-i Islām*)," that is, Shahrukh [167]. Here we can see the influence of their lord Shahrukh on the donors.[28]

At the conclusion of the preface is a quotation from the Qurʾan, relating the motivation of the waqf as preparation for paradise since "whoever desires the hereafter and strives for it as he ought to strive and he is a believer; (as for) these, their striving shall surely be accepted (17:19)."[29] They do this "in order that at the time of the great questioning on the day of the last judgment they may be not be 'the greatest losers in (their) deeds, they whose labor is lost in this world's life and they think that they are well versed in skill of the work of hands (18:103–104).'" However the true intention of the waqf is somewhat different.

2 The waqf institutions [168–70]

The waqf comprises five institutions, whose patron in all cases is given as "*mawlāt-i ʿāliyah-i kubrā, jalīlah-i karīmah-i mushār ilay-hā*" [168], that is, Chaqmaq's wife Bibi Fatimah.

Their location appears as follows. "Outside (*ẓāhir*) the above-mentioned city of the faith (Yazd), without (*khārij*) the Mihrijird gate, near (*qurb*) the Sar-i Rig

bazaar and the *mazār-i* (shrine) … Sayyid Qivam al-Din,[30] adjoining (*muttaṣil*) the Mahallah-i Dihuk." [168]

The five institutions were: [168–70]

(a) *masjid-i jāmiʿ*
(b) *khānqāh*
(c) water reservoir
(d) water course
(e) cold water well

(a) The *masjid-i jāmiʿ* is the facility referred to above. It is the core of the waqf. The waqf deed stipulates in detail the composition of its staff and their functions.
(b) The *khānaqāh* too has been referred to above. "The waqf is made for it to be a home and a lodging during travel for all Muslims (*jamāhīr-i musalmānān*), including *sayyid*s, ulamas and the poor, characterized by piety, abstinence and prosperity." [169] Ahmad b. Husayn records that "soup was served to the poor every morning" (*TJY* 97), a detail which clarifies the waqf conditions.
(c) The water reservoir was attached to the *khānaqāh* (cf. *TJY* 97).
(d) About the water course (*nahr*), the documents relate: "Her felicitous intention was to seek to dig a single water course between the masjid and the *khānaqāh* using water from the new *qanāt*." [169] From what we have seen above, this clearly refers to drawing water from the Hayrabad-i Dihuk to take to the area around the *masjid-i jāmiʿ*. Thus the "new *qanāt*" is the Hayrabad-i Dihuk Qanat.
(e) We have also referred above to the cold water well. Opposite the *khānaqāh* [169–70], it was a facility "to relieve heat and thirst by a mouthful [of this water] in times of intense heat." [170]

All these institutions described here and completed in 841 AH were clearly constructed by Bibi Fatimah.

3 Waqf property [170–75]

The waqf deed clearly distinguishes between the husband's donation and the wife's donation.

A Chaqmaq's waqf property [170–72]

(i)* buildings surrounding the *ḥammām* within the city walls of Yazd (*ʿimārat-i gird-i ḥammām*)
(ii)* the caravansary outside the city walls
(iii)–(vi)*+ water rights to the *qanāt*
(vii)+ interest in Badrabad-i MVRTY,[31] a village (*qaryah*) near Maybud.

B Bibi Fatimah's waqf property [172–75]

(i)* buildings surrounding the *ḥammām* outside the city walls of Yazd
(ii) all water and land (*tamām-i miyāh va arāżī*) of Dih-i Muhammad in Tabas Gilak[32]
(iii)+ the water wheel (*ṭāḥūnah*) of Yusuf Khalil[33] and its garden (*bāgh*)
(iv)+ buildings constructed on the khan site (*ʿimārat-i mustaḥdaṯah dar ʿarṣah-i khānī*)
(v)+ interest in Badrabad, a village near Maybud
(vi)–(xv)+ water rights to the *qanāt*

* marks property already referred to; + marks purchases

Water rights to the *qanāt* were stipulated for registered *qanāt*s in water right units for each *qanāt*. Here they have been brought together.[34] There are no examples of a person owning a whole *qanāt*; rather water rights were owned individually. To give an example, let us look at four instances registered to Chaqmaq which are shown in terms of undivided shares. [170–71]

A iii and vi the *aṣl* of the total 36 *sahm* (shares) of the Hayrabad-i Dihuk qanat:

(iii) = 6 *sahm-i mushāʿ*
(vi) = 6 *sahm* [*-i mushāʿ*][35]

A (iv) and (v) the *aṣl* of the total 36 *sahm* of Hasanabad qanat:

(iv) = 12 *sahm-i mushāʿ*
(v) = 18 *sahm* [*-i mushāʿ*]

In the deed, A-iv is written attached to A-iii as a single item. The Hasanabad qanat was a *qanāt* which flowed into the Hayrabad-i Dihuk where it exited to the surface (*maẓhar*) [170]. A total of five-sixths interest (30/36) in the Hasanabad qanat was donated by Chaqmaq. From the description in this deed, we realize that the provision of the Hayrabad-i Dihuk by Chaqmaq mentioned above was the purchase of the Hasanabad Qanat and its connection with the Hayrabad-i Dihuk Qanat. Bibi Fatimah then drew this water to Mahallah-i Dihuk.

The same vocabulary as with water rights is used also regarding the way property was held in the villages. Interest in Badrabad, near Maybud, was donated by both Chaqmaq and his wife. In detail, the *aṣl* of the total 28 *sahm* was

A (vii) = 4 5/6 *sahm* [*-i mushāʿ*]
B (v) = 11 1/2 *sahm-i mushāʿ*

Both husband and wife owned individual shares in this village, but even together they did not own more than a 60 per cent interest. Only the village of Muhammad (B ii) was totally the property of Bibi Fatimah, but we have no knowledge of how she came to get it or what the nature of the property rights were, since none of this is recorded in the deed.

Property other than the facilities we have referred to above as having been built by Chaqmaq and his wife, and B ii, are all clearly said to have been purchased. We will examine one of the most interesting of these, the buildings erected on the *khān* site (B iv). The deed records that these, a set of nine shops, were adjacent to the shrine (*mazār*) of Shaykh Jamal al-Islam, outside the city walls [172]. Jaʿfari speaks of this shrine as follows.

> A descendant of [Shaykh Jamal al-Islam] was maulana Ghiyas al-Din ʿAli Munshi. He was the preeminent man of his time and attained great fame under the Muzaffarid Sultans. In 784/1382–83 he erected the Shaykh shrine, built a tall *khānaqāh* near the cemetery, brought running water to the *khānaqāh*, and made a fragrant arcade at the entrance to the shrine. He constructed the famous Khan-i Abarquhiyan near the arcade and donated it to the shrine (*TY* 121).

Shaykh Jamal al-Islam, said to be a descendant of Anushiravan, died in 480 / 1087–88 (*TY* 120, 121).[36] Ghiyas al-Din ʿAli Munshi is well known to us as the author of a biography of Timur, *Rūznāmah-i Ghazavāt-i Hindūstān*.[37] The khan of B is clearly the Khan-i Abarquhiyan mentioned here. The waqf deed shows that there was also another group of shops which was waqf property supporting the Jamal al-Islam shrine established by Ghiyas al-Din ʿAli. Ghiyas al-Din ʿAli's son Kamal al-Din Mahmud was named as the mutavalli (administrator) of the waqf [172]. In the same area, besides these shops, there were also rooms (*ḥujrah*) and houses (*khānah*) belonging to third parties, including Amir Qivam al-Din b. Amir Muhammad Qurchi "and Ustad Shaykh ʿAli Rishtah-paz." It is apparent from this that already the khan itself had been lost and new buildings erected there; except for some of the shops, they had been alienated from waqf management.

The buildings in the group of nine shops, the waqf property of Bibi Fatimah herself, were conveyed to the greatest lady (*malikah*), the *vāqifah* (=Bibi Fatimah), by a "legal purchase contract" (*mubāyaʿat-i sharʿiyyah*) from the daughter of Ghiyas al-Din ʿAli, Bibi Khatun, and his grand-daughter Sultan Tarkan bt. Sihan al-Din Muhammad and one other [172–73]. The land was "leased (bah ijarah dadah-and) to the lady, the *wāqifah*, for ninety years, as in the deeds according to the law" by Ghiyas al-Din ʿAli's son ʿImad al-Din Masʿud and the brother of Kamal al-Din Mahmud (who was the mutavalli, as mentioned above).

In this way, the descendants of Ghiyas al-Din ʿAli managed the waqf centring on the shrine of their ancestor. We can also see that they encroached on the waqf

property, administering it as real estate. Bibi Fatimah leased land from the waqf property, bought the buildings on it, and made them her own waqf property. The lease was for the lengthy period of ninety years. It is conceivable that owners of adjacent buildings also acquired them by a similar process.

We have already touched on long leases in the course of the discussion above, in Ahmad b. Husayn's description of the *ḥammām* built on the site of a caravansary leased over a long time from the waqf of the Rashid family. At the end of the actual deed, after the list of waqf properties is the following:

> Each share (*ḥiṣaṣ*) listed, explained and recorded [here], includes houses, rooms … trees and streams, which are recognized as an appendix according to law and custom. However the land of [the *ḥammām*] within the citadel and the *ḥammām* outside the city are excepted.[38] This land is leased (*istījār namūdah-and*) and the two *ḥammām*s themselves were newly built by them [175].

This allows us to understand not only the land of the *ḥammām* inside the city walls of Yazd, but also that of the *ḥammām* outside the walls, had been acquired through lease. No further details of the lease are available but it is likely that it too was a long lease of ninety years.[39]

The deeds record, in close detail, the legitimacy of ownership of the waqf properties before they were endowed as waqf. With the exception of one village not in Yazd (B2), water rights to the *qanāt* (A3–6, B6–15) and the village near Maybud, the waqf donors had been no more than one owner among many of joint property. Even in the case of city properties, the land of A1, B1 and B4 had been leased from another waqf and so the waqf possessed only the surface rights. The long lease of a waqf property can be considered a rational means to circumvent the ban on its sale.[40] (If this was not so, it would not have been recorded in the waqf deed.) This was obviously the best way to usurp a waqf.

We can also confirm that the sugar candy factory, etc. mentioned among the facilities built by them mentioned above were not included in the waqf deed.

4 Waqf conditions [175–79]

Below are the conditions set out in the waqf deed.

(i) The position of mutawalli (tawliyat)

Shams al-Din Muhammad, Chaqmaq's son, was expressly named mutawalli. At this period, the position of mutawalli (administrator) included that of *mushrif* (counselor) and *nāẓir* (overseer), as we will see below.

The mutawalli was responsible for using the earnings from the waqf properties (*maḥṣūlāt-i mawqūfāt*) to:

(a) manage waqf assets[41] (*ʿimārat-i raqabāt*), provide for their upkeep, and maximize their earnings and the profits from leases;
(b) repair and restore waqf institutions; and
(c) pay employees [176].

(ii) Duties and salaries of employees, and other expenses

The unit of coinage prescribed here is the *dīnār aqchah nuqrah kapakī*, and its weight was stipulated as 2 dinar = 1 1/12 *miṣqāl* [176].

The duties and annual salaries of employees were also set out [176–78]. It is clear that the functions of a madrasa were attached to the masjid.

The annual expenses other than salaries were stipulated [178]:

(a) provision of food (*sufrah va āsh*) to the poor and travellers at the *khānaqāh* = 3000 dinar.
(b) provision of sweets (*ḥalāva va nuql*) to those who gathered in the evening = 100 dinar
(c) lighting expenses for lamps and candles at the masjid and the *khānaqāh* = 180 dinar.

We can understand from this how considerable was the amount of money spent on the soup provided morning and evening that Ahmad b. Husayn described.

Table 5.3 Duties and salaries of the officers

Officers	*Salary per year (dinar)*	*Conditions*
imam	360	(leader of prayers) 1 dinar per day
hafiz (ten people)	2160	(reciters of the Qurʾan)
muṣaddar	360	leader of hafiz. If there is not a suitable person, the salary is to be paid to two hafiz.
mudarris	1200	(professor)
muʿīd	980	(tutor)
ṭālib (eight people)		(students) 980 dinar for *muʿīd* and *ṭālib*
khaṭīb	120	
muʿazzin	360	announcer of the hour of prayer
vāʿiẓ	150 (+130)	(preacher) 130 more dinar is to be paid to him in Ramazan
muʿāshir-khān (two people)	100	? "When the *khaṭīb* goes up to the minbar, they recite hadith"
muʿallim	120	(teacher) he teaches the Qur'an to children
farrāsh/bavvāb (two people)	540	(cleaners/gatekeepers)

(iii) Salaries of mutawalli

> When the offices of mutawalli, in accordance with the law for the waqf properties (*mawqūfāt* va *musabbalāt*) listed [here], are first entrusted to the highest person (*ʿālī-janāb*) (= Shams al-Din Muhammad) . . . , the salaries (*ḥaqq*) for the offices of mutawalli, *mushrif* and *nāẓir* are to be determined as one sixth of the total revenue (*kull-i maḥāṣil*) from the waqf property [178].
>
> If there is any surplus of income over the expenditure determined, explained and recorded [here], one third of it will accrue to the person who is mutawalli according to the law, and the remaining two thirds will [in the future] be applied to the purchase price of the shares (*ḥiṣaṣ*) [of properties], which will be included in the waqf assets (*raqabāt*) [178].

Thus the amount the mutawalli acquired was one sixth of the total assets and one third of the surplus after subtracting expenses.

(iv) Conditions for the lease of waqf property

"Waqf assets may not be leased (*bah ijāraha na dihand*) for more than three years, either by single contract or by numerous different contracts. They may not be leased to those with authority and might (*arbāb-i istilā va taghallub*)" [178].

This clause aims to prevent the long term leasing of waqf property, which caused the expropriation of the waqf. However, Chaqmaq himself took advantage of a long lease. This is a very interesting clause, thinking of Chaqmaq's standing in Yazd.

(v) Conditions concerning the inheritance of the offices of mutawalli, mushrif *and* nāẓir

After stipulating that no one can intervene in the office of mutawalli, provision is made for the inheritance of his various positions after his death. These will be succeeded to by the descendants of Shams al-Din Muhammad's sons, with the office of mutawalli going to the eldest, that of *mushrif* to the one in the middle, and that of *nāẓir* to the youngest [178–79].

> The salary (*haqq al-saʿy*) of the basic one sixth of the total revenue and one third of the surplus will, according to the above conditions, be held jointly, without predominance or distinction, among the children who carry out the above offices (*manāṣib*) [179].
>
> Where there are not more than two children, the offices will remain between them, as will the acquisition rights. These will pass to their

children and their children's children and their children's children . . . for as long as they continue [179]

Thus the offices pass by inheritance down the male line. It was supposed that the waqf would be maintained by Chaqmaq's descendants. If there were no male descendant, females could inherit [179].

This completes the main part of the deed. It concludes with a description of:

5 confirmation of the qadis [179–80]
6 endorsement of secretaries [180]
7 date [180]
8 endorsement of the donor [180]
9 endorsement of witnesses [180].

The deed was written down at the end of the month of Rabiʿ I, 849 (1445.7.6) by "Muhammad b. Masʿud b. Muhayyi b. Abi mulaqqab bah Qutb al-Hujjah" and confirmed by the qadis.[42] Endorsements of the donors and the witnesses follow it.

III

An examination of the contents of the waqf deed makes it clear that Chaqmaq's and Bibi Fatimah's prime purpose in setting up the waqf was to secure their wealth for their descendants. The office of mutawalli was to be held by their son and his male descendants,[43] and, together with the offices of *mushrif* and *nāẓir*, could not be alienated to a third person. Rights to income from the waqf were also recognized, a substantial sum comprising one sixth of the total assets and one third of the surplus. The deed also stated that waqf assets could be extended among descendants, by using the remaining two thirds of the surplus.

Salaries of employees and costs for the provision of food are detailed, but we can say that the management of waqf facilities supporting the masjid, etc. took second place, since in actual fact, the stipulations of the document put this second among the major functions of the mutawalli's office.

Bibi Fatimah's initiative in setting up the waqf can be clearly discerned. In the sense that she wanted to secure her children's inheritance in a polygamous system, hers was probably the stronger motivation. Furthermore, her mausoleum was built amid the facilities that she had built.[44] However, Jaʿfari and Ahmad b. Husayn, both contemporaries, record that the masjid was from the beginning built in Chaqmaq's name, so we cannot ignore his wishes in the matter. As we will see, the development of Mahallah-i Dihuk was begun by him, and the commercial facilities there were bequeathed to his and Bibi Fatimah's children by a joint waqf. After setting up this waqf, Chaqmaq removed to Herat for a while, but this fact too authenticates his motivation.

The description of the waqf properties in the deed reveals the nature of the wealth Chaqmaq and Bibi Fatimah had in Yazd and provides us with an example of the formation of wealth by an amir during his period of office during the Timurid period. We know that there were some properties that did not form part of their waqf, but from the point of view that the prime purpose in setting up the waqf was to protect their wealth for their descendants, the waqf properties in the deed probably comprise the bulk of their wealth in Yazd.

An analysis of the village properties tells us that they were by no means "great landowners." Even the *qanāt* water rights which made up the majority of the property were held jointly with others. The core of Chaqmaq's wealth was commercial properties such as shops and the caravansary built in Mahallah-i Dihuk, including the non-waqf sugar factory which was to be inherited after his death. Other than the *ḥammām*, which his wife owned, all were erected by Chaqmaq, and until they were made waqf property later, were all in his private possession. Thus he would have received the profits from them personally. The masjid in the centre of the *maḥallah* came, with the passage of time, to be considered his wife's foundation, built in order to set up the waqf. The development of this *maḥallah* outside the city walls was clearly undertaken as a private venture by Chaqmaq, rather than as the city's governor expanding the city for the benefit of its residents. We can say that it was basically a capital investment to develop the quarter as a commercial district.[45]

The deed repeatedly stresses the fact that they had acquired property from others "by contract according to the law." It was of course a necessity to establish the legality of such acquisitions when employing the waqf system under Islamic law to bequeath wealth to descendants. This clearly represents an assimilation of private rights based on law by a firmly established urban society.[46] We can imagine that men used their position as governors in various ways and may assume it from their long term leases of other waqf property, but we cannot detect anything further from descriptions in Yazd gazetteers or waqf deeds.

Jaʿfari and Ahmad b. Husayn speak often of the prosperity of Yazd during the time of Shahrukh. Jaʿfari describes the city's expansion in the following terms: "Newly to be seen are about ten thousand houses and shops, *ḥammām*s, madrasas, *khānaqāh*s and gardens" (*TY* 3). Ahmad b. Husayn, on the other hand, speaks of the rural areas. "The prosperity of the town and province reached such a degree that the peasants (*mardum-i dahāqīn*) were not provided with the means of cultivation (*ʿavāmil*), and they brought grain, cotton and fruit to the town on horses and mules and wore linen or brocade clothes and ate fat hens with their rice" (*TJY* 198).[47]

At least one of the reasons for this prosperity must have been the economic activities of Chaqmaq, who became assimilated into urban society, respected the law, and sought profit at the same level as the urban notables. Chaqmaq's activities and his waqf can only be one example of one amir in one provincial city, Yazd. In order to grasp more clearly the actuality of Iranian urban society in the Timurid period, we must gather reports from various levels of society and various cities.

It is possible to ascertain that Chaqmaq's waqf functioned from the fifteenth century at least until the end of the nineteenth century. However, space does not allow me to continue the analysis down to this period and I look forward to another opportunity to do so.[48]

Notes

* The original of this chapter was written in Japanese and published in *Seinan-ajia kenkyu* no.32 (1990): 56–80. We express profound sorrow at Professor Iwatake's untimely death. All the faults in the translation lie with the editor. Additions in the footnotes within square brackets were prepared by the editor.

1 This masjid has attracted scholars of architectural history as a characteristic example of a Timurid monument. Renata Holod-Tretiak, "The Monument of Yazd, 1300–1450: Architecture, Patronage and Setting," (Ph.D. dissertation, Harvard University, 1972), 101–02; Lisa Golombek and Donald Wilber eds. *The Timurid Architecture of Iran and Turan* (Princeton: Princeton University Press, 1988), 421–24.

2 His name is as it appears in the waqf deed discussed below. His *lakab* according to the historical materials used here is Jalal al-Din; in the waqf deed it is that of his father (see below). Ando makes no reference to Chaqmaq Shami, Shiro Ando, "The Central Elements of the Amīr Stratum in the Government of Shāh Rukh during the Timurid Dynasty," (in Japanese) *Toyoshi-kenkyu* 43(1985): 88–123. [German Version: "Das Corps der timuridishen Emire unter Šāhruḫ," *Zeitshrift der Deutschen Morgenländischen Gesellschaft* 139(1989): 386–96.]

3 Research into the Iran region during the Timurid dynasty, has, from the standpoint of the study of Iranian history, been taken up only from an interest in the prehistory of the Safavid dynasty. The research of Aubin is virtually all that exists; Jean Aubin, *Deux sayyids de Bam au XVe siècle* (Wiesbaden, 1956). However, in terms of recent study of urban society, work has been done on fifteenth and sixteenth centuries R. Rosemarie Quiring-Zoche, *Isfahan im 15. und 16. Jahrhudert* (Freiburg: Schwarz, 1980), see also Masashi Haneda, "The Ḫūzānīs: History of Distinguished Family of Iṣfahan from the 15th to the 17th Century," (in Japanese) *Shigaku-zasshi* 96/1(1987): 37–38. [French version: La famille Ḫūzānī d'Isfahan (15e–17e siécles) *Studia Iranica* 18 (1989)]. From the standpoint of Timurid history, regional studies have only been done of dynastic centers like Herat and Samarqand. Among them, Terry Allen takes up Herat after Shahrukh made it his capital, based on his own research comprehensively covering toponyms and monuments in the region of Herat, and attempts to show symbiotic social and economic relationships between ulamas and rulers or amirs in urban society through the medium of the waqfs; Terry Allen, *A Catalogue of the Toponyms and Monuments of Timurid Herat* (Cambridge, Mass.: Aga Khan Program for Islamic Architecture, 1981); idem. *Timurid Herat* (Wiesbaden: Reichert, 1983), 36–45; cf. Shiro Ando's Japanese review in *Toyoshi-kenkyu* 44/4 (1986):166. Sadly his conclusion has not been proved yet since he had not accumulated all the mass information about the monuments and the socio-economic position of their builders at individual level. Waqf documents are one of the most useful historical documentary sources for this purpose. In Japan the importance of the waqf documents of Khajah Ahrar of the Naqshbandi order in Samarqand has been demonstrated in Eiji Mano, "Recent Studies on the Naqshbandīya" (in Japanese) *Isuramu-sekai* 21(1983): 45–51. These documents are presently being studied by M. Kawamoto; Masatomo Kawamoto, "A Waqfiyya of Khwāja Aḥrār: A Study of Waqf," (in Japanese) *Jinbun-gakuho* 63 (1989): [53–68]; idem. "Naqshbandī order," (in Japanese) *Sekaishieno toi* vol. 4 (Tokyo: Iwanami, 1989),190–96. However only the

waqf of Mīr ʿAlī Shīr is known in Herat (Kawamoto, personal communication); see also Kazuyuki Kubo, "Herat in the Early Sixteenth Century: Under the Reign of Two Rising Dynasties," (in Japanese) *Shirin* 71/1 (1988): 146, n. 28. [See Maria Eva Subtelny, "The *Vaqfīya* of Mīr ʿAlī Šīr Navaʾī as Apologia," *Journal of Turkish Studies* 15(1991): 257–286].

4 Regarding authorities, see the chronological table. A description in a Yazd gazetteer written in the second half of the seventeenth century tells us that this exile was the Chaqmaq in question (*JM* I: 169–70; *JM* III: 740–41); the Mamluk and the Ottoman dynasties are confused and he is said to be "YNKCRY-AQASY (*JM* I: 169). It is very likely that Sharaf al-Din ʿAli Yazdi, the author of *ZNY*, knew him personally; cf. John E. Woods, "The Rise of Timurid Historiography," *Journal of Near Eastern Studies* 46 (1987): 99ff.

5 Concerning *TY* and *TJY*, see Akio Iwatake "The Waqfs of the Niẓām Family in Fourteenth-century Yazd," (in Japanese) *Shirin* 72/3 (1989): 3, 4 n. 8, 36 n. 20.

6 Of the text of *TK*, only part of the close (*TK/tx*) and part of the biographies (*TK/bio*) of the Leningrad MS have been published. The present author uses *TK/tr*, a German translation of the post 1405 portion. The Calcutta MS referred to as *TK* by Woods is that recorded up to 817 (1414). Woods, "Tīmurid Historiography," 107; Wladimir Ivanow, *Concise Descriptive Catalogue of the Persian Manuscript* (Calcutta, 1924), 4. According to Iraj Afshar, this can be identified with Jaʿfari's third work *Tārīkh-i Vāsiṭ* (*TK/bio*[muqaddimah] 93).

7 For an interesting life history of Ibn Shihab (called "*shāʿir-munajjim*"), the author of *JTH*, see Aubin, *Deux sayyids*, 17–19; *JTH* (muqaddimah) 13–15. Originally a *tuvāchī* in the Yazd army (see Note 11 below; also *JTH*: 15, 24, 28, etc.), he moved to Kirman probably when Chaqmaq was appointed to Yazd, and for the next thirty years was "*ʿāmil va żābiṭ va ʿamīd va vaẓīfah-khār-i vaqf*" there (*JTH* 94). He served at the same time under Hajji Muhammad b. Gunashirin for fourteen years until the death of the latter in 854/1450 (*JTH* 2) and then served Abu al-Qasim Babur b. Baysunghur, also presenting him with *JTH* (*JTH* 139). Though he continued to use the *nisbah* "*yazdī*," and in 855 AH again visited Yazd with Babur, his records after his move centre on Kirman.

8 *TK* adds the *nisbah* "Ījī" (*TK/tr* 97, 101). Chaqmaq also had a wife called Payand Sultan (called Bayka Sultan) (*TJY* 244). She was the sister of Sultan Muhammad b. Baysunghur b. Shahrukh, and so Shahrukh's grand-daughter (*TJY* 231). Unlike Bibi Fatimah, she did not undertake any independent activities. The dates of marriage are known for neither of them.

9 The amir Firuz-Shah was appointed to Abarquh at that time (*JTH* 41; cf. Ando, "The Central Elements," 108, 110).

10 Aubin gives a detailed description of these events. Aubin, *Deux sayyids*, 39–50.

11 "I (*īn faqīr*) was tuvachī in the army at Yazd and Abarquh, and led 450 *takhsh-andāz* and *raʿd-andāz* (*JTH* 42). cf. Aubin, *Deux sayyids*, 43.

12 In the copy in Istanbul of Rumī's *Dīvān* (Veliedden 1680) completed in the month of Muharram in 818 (1415.3.13–4.11) there is the book seal of "Muḥammad al-Jaqmāq." It is thought that this copy was made to present to Iskandar b. ʿUmar Shaykh who was defeated during Sharukh's first campaign to ʿIraq-i ʿAjam and Fars. Hellmut Ritter, "Philologika XI, Maulana Ğalaladdīn Rumī und sein Kreis," *Der Islam* 26/2 (1940): 147; idem "Philologika XI, Maulana Ğalaladdīn Rumī und sein Kreis (Fortsetzung und Schluß)," *Der Islam* 26/3 (1942): 240 n. 1; Jean Aubin, "Le mécénat timouride à Chiraz," *Studia Islamica* 8(1957): 77 n. 6. This was not Chaqmaq himself, as Aubin thought, but his son Shams al-Din Muhammad. This shows that Chaqmaq and his family must have achieved power in this region around the time the copy was made.

13 After his return to Yazd, he was appointed to "*Irāq*" in 846 AH (*MS* 774) and he visited Sultan Muhammad in Qum by the winter of that year (end of 1442 – beginning of 1443) (*TJY* 231–32; *TK/tx* 566; */tr* 116–17). Therefore his return to Yazd must have taken place in the course of that year (though *TJY* does not mention the date). The date in the chronology is based on this.

14 Chaqmaq and Gunashīrīn also went in the direction of Manujan in order to help Sayf al-Din, the governor of Hormuz who had sought the aid of Shahruh. (Gunashirin died at this time, cf. Aubin, *Deux sayyids*, 52–53.) As seen in Note 8, Chaqmaq had married the grand-daughter of Shahrukh.

15 *TJY* has Bagh-i Lastan. "It is where the *ḥākim*s (governors) of Yazd live" (*manzilgāh-i ḥukkām-i Yazd*) (*TJY* 211).

16 Built in 799/1396–97 at the order of Timur (*TY* 39). It was enlarged, incorporating a section of the city, by Iskander b. ʿUmar Shaykh in 808 (1405–6) (*TY* 41; *TJY* 91–92; cf. Aubin, "Le mécénat," 76).

17 According to a seventeenth century Yazd gazetteer, this *dīvān-khānah* was built in 831/1427–28 (*JM*I 174; *JM* III 741).

18 Among the waqf properties of Yazd (No. 423 according to the editor), "one caravansary of cloth dealers (*kārvānsarā-yi bazzāzī*) [located] in the centre of the great suq, Suq-i Kabir, inside the city of Yazd (*dākhil-i baldah-i Yazd*, indicating the area within the walls)" (*VNR* 88). The Masjid-i Jamiʿ of Yazd was built in the centre of the Great Suq (cf. Iwatake, "Niẓām Family," 35 n. 4).

19 The section of this description in *TK/tr* 97 is edited in *TY* (*taʿlīqāt va tawżīhāt*) 201–2. "They bought houses and land, then pulled down the houses to build (this *masjid-i jāmiʿ*)" (*TY* 79).

20 An inscription concerning the construction of this mosque exists (Īraj Afshār ed. *Yādgārhā-yi Yazd:vol.2: Muʿarrifī-i Abniyyah-i Tārīkhī va Āṯār-i Bāstānī-i Shahr-i Yazd*, [Tehran: Anjuman-i Asar-i Milli, 1354/1975], 189–90). Here the patron of the building is given as Bibi Fatimah, and it records that the work was completed in the month of Rajab, 841 (1437.12.29–1438.1.27). The date of completion of the *khānaqāh* is in *TJY* 97 and of the cold water well in *TJY* 224. The gazetteers ascribe a number of facilities to Chaqmaq's wife, but they are all recorded in the section on his own buildings.

21 At that time, the sugar manufacturer Khajah Hajji ʿAla al-Din Qannadi and his three brothers built sugar factories outside Yazd at Sar-i Rīg, as well as a large residence. These are recorded specifically in the section of the Yazd gazetteers dealing with Timurid buildings (*TY* 70; *TJY* 112–13). This would seem to be a highly profitable business.

22 In 850/1446, when Sultan Muhammad's attendant visited Yazd seeking to establish his master's rule there, Shams al-Din Muhammad was "*vālī* (governor) of Yazd because of his father" (*TJY* 236). In 855 Shams al-Din Muhammad was appointed to Yazd by Babur; at that time he decided on his son Ahmad and ʿAlīka, an amir under his father, as representatives (*qāʾim maqām*s).

23 The buildings of Chaqmaq's son Muhammad are also listed in the Yazd gazetteers. He reorganized Qalʿah-i Mubarakah and built "Dar al-Qurʾan" (*TJY* 98) and added thirty shops to the bazaar at the Mihrijird gate, one of the gates to the city (*TY* 62). (This was beside the facilities his parents had built; see below.) He also constructed a *bāgh* (*TJY* 98, 201–2). Concerning gardens, apart from Chaqmaq's Bag-i Layistan, it is recorded that Bayga Sultan built a *bāgh* (*TJY* 98).

24 Allen, *A Catalogue*, 121.

25 The existence of the madrasa of Chaqmaq Shami was pointed out to me by Kubo Kazuyuki, to whom I express my thanks. In the list in *Timurid Herat* by Allen (p. 74) the dating of this *madrasah* as 833 AH is based on the reference to Chaqmaq in *MS* at

this time (Allen, *A Catalogue*, 121; cf. Vasilii V. Barthold, *Ulugh-Beg*, tr. by Vladimir and M. Minorsky [Leiden, E. J. Brill, 1958], 175, n. 1); it does not mean that the madrasa was in existence at this date.

26 Photographs of the opening paragraph and the close are appended to *VNC/b* 107–8; */c* 163–64. However, there is no information about the size of the text the transcription is based on nor its present state of preservation.

27 Concerning the form of waqf documents, see Kawamoto, "A Waqfiyya." This is an easy-to-understand explanation of the contents of a series of waqf documents.

28 Among their establishments Shahrukh's name was contained in the inscriptions for the *masjid-i jāmiʿ* (see Note 20 for inscription), the drinking fountain attached to the cold-water well, (*TY* 159), and the *ḥammām* within the city walls (*TJY* 99). At the beginning of this waqf document, together with a verse from the Qurʾan are the words of ʿAli b. Abi Talib [168] while in that of the drinking fountain is a list of the names of twelve imams (*TY* 159).

29 The chapter and verse numbers of the Qur'an are according to the Cairo edition.

30 This shrine was an establishment of the Nizam family which in the middle of the fifteenth century became the Sayyid shrine (Iwatake, "Niẓām Family," 6, 9 [n. 8]).

31 Maybud was a small city near Yazd. Badrabad is now lost and the reading MVRTY is unclear.

32 Tabas Gilak is situated along the road through the great desert between Yazd and Herat (on the eastern edge of the desert). This is the only property not in Yazd.

33 *VNC/a* 877; */b* 111; */c* 172 all have "*ṭāḥūnah-i Yūsuf Jalīlī*" and *TY* 150 and *TJY* 99, 218 called the watermill "*āsiyā-yi Yusuf Khalīl*" (*ṭāḥūnah* and *āsiyā* both refer to watermill or flour mill). Especially *TJY* 99 indicates that it was a waqf. Amir Yusuf Khalil was a *dārūghah* in Yazd at the time of Tīmur (*TJY* 175) This can also be known even according to the facsimile version of *ZNY*, *ZNY/fac* 439b. However, in *TJY* there exists a variant, "*āsiyā-yi Yūsuf Khalīlī*," and the amir in *ZNY/tx* 379 has been edited as Yusuf Jalīl. Here, I will use Yusuf Khalil.

34 Concerning modern water right practices in Yazd, see Michael E. Bonine, "From Qanat to Kort, Traditional Irrigation Terminology and Practices in Central Iran," *Iran* 20 (1982): 145–59 (based on surveys conducted in 1970–71 and 1977). Water-right practices are determined for each *qanāt* individually.

35 "*sahm*" is here used as a term denoting the share ratio of commonly-held property. (It is also a word used for the distribution ratio of inheritance or the interest ratio of those holding rights regarding the profit of a waqf [cf. Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 170, 302; Kawamoto, "A Waqfiyya," 63]. "*aṣl*" ("sum") indicates the number that should be the denominator of the interest ratio. Thus 6 among 36 *sahm* would be a one sixth interest. *mushāʿ* means "jointly owned in undivided shares" (Ann K. S. Lambton, *Landlord and Peasant in Persia: Study of Land Tenure and Land Revenue Administration* revised ed. [Oxford: Oxford University Press, 1969] 435). A–v and the other items use the word "*kāmil-i shaʿi*" (complete joint ownership) which has the same meaning.

36 The name "Jamal al-Islam b. Masʿud . . . b. Jamal al-Islam" can be seen in a record of witnesses, undated but clearly before the middle of the fourteenth century, which is attached to a collection of waqf documents of the Nizam family. This indicates that a relative of Giyas al-Din belonging to his father's or grandfather's generation was named after the shaykh. See *JKh/a* 205; /b 554.

37 cf. Kazuhide Kato, "Timur's Military Expedition to India," (in Japanese) in *Rekishiniokeru Bunmeino Shoso* (Tokyo: Tokaidaigaku shuppankai, 1974), 175–88; Woods, "Tīmurid Historiography," 93 ff.

38 "*sivā-yi ʿarṣah-i [ḥammām-i] dākhil-i shahr va ḥammām-i khārij*" (*VNC/a* 880; */b* 113; */c* 175. The section in brackets in the text can be found only in *VNC/a*.

39 In a seventeenth-century Yazd gazetteer, in the section referring to "*tavārīkh-i qadīm va jadīd-i Yazd* (= *TY*, *TJY*), it is recorded that the lease for the land of the *ḥammān* within the walls of Yazd was 'ninety years'." (*JM* I 175).
40 Later, a ninety-nine year lease became general (Lambton, *Landlord*, 115, 232–33).
41 Concerning the term "*raqabāt*," see Vladimir Minorsky, *Bulletin of the School of Oriental Studies* 9 (1938): 953 (n. 3); Lambton, *Landlord*, 459–60 ("the soil and proprietary rights over the soil"). It translates as "[waqf] assets."
42 The signatures of the two qadis are not shown in the edited version. Both Rukn al-Din Hasan b. Safi al-Din Muhammad b. Ziyaʾ al-Din Muhammad b. Majd al-Din Hasan al-Razi and Majd al-Din Hasan b. Sharaf al-Din Husayn b. Majd al-Din Hasan al-Razi were connected with the distinguished Razi family of Yazd, which can be traced back to the reign of Rashid al-Din (*TY* 92ff; *TJY* 134ff). Majd al-Din Hasan, their grandfather and great grandfather, was renowned as an impartial judge, and he left many works on law (he died in 787 [1385–86]) (*TY* 122). Their fathers were included among the original owners of four sets of water rights in Chaqmaq's waqf property.
43 Ahmad b. Husayn, a contemporary, specifically noted, "He determined that the office of mutawalli would be in the name of his son Shams al-Din Muhammad Mirak and his children." (*TJY* 100).
44 Though not mentioned in contemporary records, a dome (*gunbad*) was constructed as her mausoleum in one corner of the *khānaqāh* supported by the waqf, and she was buried there (*JM* I 177). It is not clear where Chaqmaq's grave was, but there is a strong possibility that he was buried in the madrasa which bears his name in Herat (cf. Iwatake, "Niẓām Family," 38–45).
45 It is known that Shahrukh and Khajah Ahrar invested in caravans. See Walther Hinz, *Welt des Orients* 1 (1949); Eiji Mano, "Iranian and Central Asian Society under the Timurids" (in Japanese) *Iwanamikoza Sekairekishi,* vol. 8 (Tokyo, Iwanami: 1969), 320; Kawamoto, "Naqshbandī order," 189) It is very possible that one reason this amir developed the quarter was to invest in the same way.
46 Barthold points out the importance Shahrukh placed on Islamic law (*sharīʿat*) (Barthold, *Ulugh-Beg*, 22, 37, etc.), and Woods confirms this (Woods, "Tīmurid Historiography," 99, 104, 105). This is a point that needs to be demonstrated at various levels, but the present example of Yazd is consistent with this.
47 Lambton draws attention to this description in the *TJY* and gives a translation based on a poor copy of the Yazd version (Lambton, *Landlord*, 99–100). However she erroneously ascribes this to the period when Yazd was under Sharaf al-Din Muzaffar b. Muhammad b. Muzaffar (Shah Muzaffar) who died in 754/1353. The description is designated as being of the time of "*ān padshāh-i ʿālam-panāh*." The *pādshāh* (emperor) referred to here is Shahrukh, who has been referred to immediately before (*TJY* 197–98).
48 [Akio Iwatake completed this article. A. Iwatake, "The Continuity of Waqf in Iran: A Case of Amīr Chaqmaq's Waqf in Yazd," (in Japanese) *Isuramu-sekai* 42(1993): 1–19.]

List of sources and their abbreviations

JKh/a: Īraj Afshār and Muḥammad Taqī Dānishpazhūh eds. *Jāmiʿ al-Khayrāt*. (Tehran, Farhang-i Iran-zamin, 1341/1962–63).

JKh/b: Īraj Afshār ed. ["Jāmiʿ al-Khayrāt,"] in Īraj Afshār, *Yādgārhā*, vol. 2 (Tehran: Anjuman-i Asar-i Milli, 1354/1975). 391–558.

JM: Muḥammad Mufīd Mustawfī Bāfqī, *Jāmiʿ-i Mufīdī* ed. Īraj Afshār vols. 1 and 3 (Tehran: Asadi, 1340/1961–1342/1963).

JTH: Ḥasan b. Shihāb b. Ḥusayn b. Tāj al-Dīn Yazdī (Ibn Shihāb). *Jāmiʿ al-Tavārīkh-i Ḥasanī*, ed. Ḥusayn Mudarrisī Ṭabāṭabāʾī and Īraj Afshār (Karachi, 1987).

MF: Fasīḥ Khāfī, *Majmal-i Faṣiḥī*, ed. Maḥmūd Farrukh, vol. 3 (Mashhad: Bastan, 1339/1960–61).

MS: ʿAbd al-Razzāq Samarqandī, *Maṭlaʿ-i Saʿdayn va Majmaʿ-i Baḥrayn*, ed. Muḥammad Shafīʿ vol. 2 (Lahore: Gilani, 1941).

TJY: Aḥmad b. Ḥusayn b. ʿAlī al-Kātib, *Tārīkh-i Jadīd-i Yazd* ed. Īraj Afshār (Tehran: Farhang-i Iran-zamin, 1345/1966).

TK: Jaʿfar b. Muḥammad b. Ḥasan al-Ḥusaynī (Jaʿfarī). *Tārīkh-i kabīr*.

TK/bio: Īraj Afshār ed. "Chand faṣl az *Tārīkh-i kabīr*," *Farhang-i Īrān-zamīn* 6 (1337)

TK/tr: Abbas Zaryab, *Der Bericht über die Nachfolger Timurs aus dem Taʾriẖ-i kabīr de Ǧaʿfarī ibn Muḥammad al-Ḥusainī* (Mainz, 1960).

TK/tx: B. B. Bartold, "Novyj istochnik po istorii Timuridov." in *Sochneniya* vol. 8 (Moscow: Institut Vostokovedeniya, 1973). 546–74.

TY: Jaʿfar b. Muḥammad b. Ḥasan al-Ḥusaynī (Jaʿfarī), *Tārīkh-i Yazd.* ed. Īraj Afshār (Tehran: Bungah-i Tarjumah va Nashr-i Kitab, 1338/1959–60).

VNC/a: Īraj Afshār ed. "Vaqfnāmah-i Amīr Chaqmāq va Sittī Fāṭimah." in *JM* III 871–84.

VNC/b: Muḥammad Taqī Dānishpazhūh ed. "Vaqfnāmah-i Aīr Chaqmāq." *Maʿārifʿ-i Islāmī* 4 (1346): 106–17.

VNC/c: Īraj Afshār ed. [Vaqfnāmah-i Mīr Chaqmāq]. in Īraj Afshār *Yādgārhā-yi Yazd.* vol.2, 162–83.

VNR: *Vaqfnāmah-i Rabʿ-i Rashīdī*. ed. M. Mīnuvī and Īraj Afshār (Tehran: Anjuman-i Asar-i Milli, 2536/1978).

ZNS: Niẓām al-Dīn Shāmī , *Ẓafar-nāmah*. ed. F. Tauer (Praha: Oriental Institute, 1937).

ZNY/tx: Sharaf al-Dīn Yazdī, *Ẓafar-nāmah* ed. Muḥammad ʿAbbāsī (Tehran: Amir-i Kabir, 1336/1957–58).

ZNY/fac: Sharaf al-Dīn Yazdī, *Ẓafar-nāmah* ed. Assam Urunbayev (Tashkent: Fan, 1972).

6

THE WAQF OF USTAD ʿABBAS

Rewrites of the deeds in Qajar Tehran[1]

KONDO Nobuaki

Introduction

No one can deny that a waqf document is one of the most important sources on the social history of the Islamic world. This is also true of the history of Qajar Iran, although it had been neglected until quite recently. Waqf influenced the urban development of Tehran that had only become the capital under the Qajars; many new buildings such as Masjid-i Shah (Masjid-i Imam), Madrasah-ʾi Marvi, Madrasah-i Sepahsalar (Madrasah-i Muttahari) were financed through the waqf system. Religious ceremonies of the people like *taʿziyah* (the mourning ceremony on behalf of Imam Husayn) were also supported by waqfs.[2] Moreover, a considerable number of the surviving documents will make it possible to rewrite social history of the period.[3]

The most important documents related to waqf are, of course, waqf deeds. A deed validates the waqf and explains the name of the founder, the waqf property, the purpose, the stipulations, the date, etc. The reader of the deed may assume that the waqf operated along with the stipulations of the deed for a long time because a waqf is legally irrevocable. Nevertheless, recent study shows that in some cases other documents than the original deed indicate that a waqf-administrator ignored the original stipulation and operated the waqf in a different way.[4] But even in these cases there was no need to draw up another deed.

The case that will be described in this chapter is slightly different. The waqf had three different deeds, which are different in content and date. It means that the original waqf deeds were openly rewritten or subjected to revisions in spite of irrevocability of waqfs. It is also true that the waqf deeds could be drawn up anew, if they were torn, stolen or lost, or in the case when they posed legal problems.[5] But in this case, the deeds do not seem to have been damaged, and the transcriptions of all of them remains in the archive. Why were these deeds drawn up several times? What relation do they have with each other? The purpose of this chapter is to explain the process by which waqf deeds were

drawn up in the Qajar period and investigate the background to such deeds, preserved in the Waqf Organization (Sazman-i Awqaf va Umur-i Khayriyyah).[6]

The waqf that will be analyzed here was not a very large one. Its founder, Ustad ʿAbbas, who was a builder (*bannāʾ*) by profession, had constructed a *ḥammām* and a *takyah*. Then he founded a waqf on behalf of Imam Husayn, or rather of the *taʿziyah* for the Imam, which was to be held at the *takyah*, as well as on behalf of his descendants. The waqf property consisted of the *ḥammām* and several shops. One good point is that the transcripts of the deeds contained many endorsements and marginal notes; they are very helpful in describing the process of drawing up the deeds. This chapter will show how waqf deeds were treated in the Qajar society. Our discussion will also attempt to clarify some aspects of social relations and judicial customs in the Qajar period.

The documents and their transcripts

The documents introduced here are today kept in a file entitled "Ustad ʿAbbas Bannaʾ khalaf-i Aqa Muhammad ʿAli" that is preserved at the Department for Identification of Documents and Endowments, the Waqf and Charity Organization in Tehran.[7] They may be described as follows:

- Document 1: waqf deed by Ustad ʿAbbas dated 20 Rajab 1188/26 September 1774. It was registered at the office of waqf deeds (*daftar-i vaqfnāmajāt*) on Day 1310/January 1922.

  Three transcripts on the official paper of the Ministry of Justice (Vizarat-i Dadgustari or Vizarat-i ʿAdliyyah), dated Murdad 1332/1953 (version A), Aban 1332/1953 (version B), and 1316/1937 (version C).[8]
- Document 2: waqf deed by the son and the daughter of Ustad ʿAbbas, Mulla Ghulam Husayn and Sakinah Khatun Khanum, dated the night of 29 Rabiʿ I 1265/21 February 1849.

  One transcript dated 1333/1915 on the official paper of the Ministry of Sciences and Waqfs (Vizarat-i Maʿarif va Awqaf) (version A), which means the registration of the deed, and one transcript dated 1332/1953 written on the official paper of the Ministry of Justice (version B).
- Document 3: waqf deed by Ghulam Husayn and Sakinah Khatun Khanum, dated the night of 6 Rabiʿ II 1270/5 January 1854.

  Transcript dated 1298/1920 written on the official paper of the Ministry of Sciences, Waqfs and Fine Arts (Vizarat-i Maʿarif va Awqaf va Sanayiʿ-i Mustazrafah), which means the registration of the deed.

All the transcripts contain the statement "This transcript conforms to the original (*savād muṭābiq-i aṣl ast*)," the date of transcript, the signature of the copyist, and the seal of the government bureau involved. The transcripts on the official paper of the Ministry of Sciences and Waqfs were written with a reed pen and attempted to preserve the original form of the deeds. On the other hand,

the papers used by the copyists from the Ministry of Justice are ruled, and it is difficult to discern the original form. This is especially true in the case of Document 1. Each copyist of transcripts of the same document transcribes several words in different ways. The orders of endorsements included in the documents are different among the transcripts, and a few endorsements are totally omitted in the transcripts. Sometimes the copyist gave up reading difficult words and wrote "some words illegibly (*chand kalamah ghayr-i khānā*)." Though these transcripts present some problems if regarded from a formal or diplomatic perspective, they are the only source currently available on this waqf and they contain rich information on it. The advantage of transcripts is that they offer not only readings of seals but also the names of the holders of the seals: they help us to identify the individuals involved in the process of drawing up the original deeds.

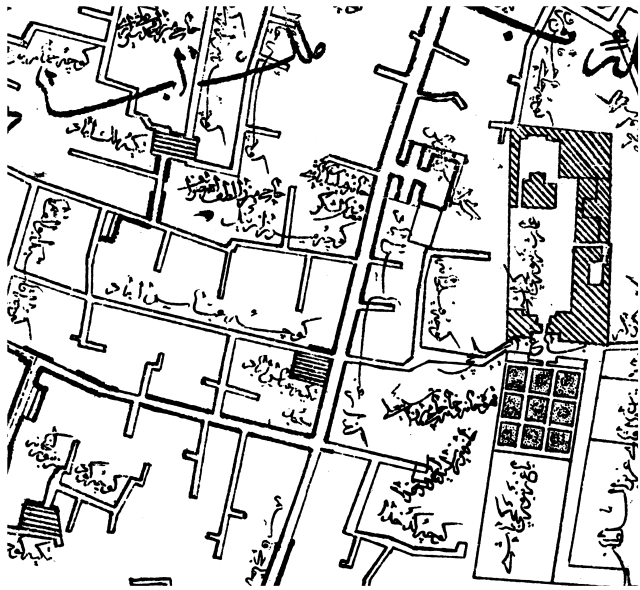
The ruled paper on which Transcript A of Document 1 was written had a printed heading "Special for plaintiffs (*makhṣūṣ-i aṣḥāb-i daʿvā*)." That means that it was prepared for a lawsuit around 1332/1953. The three transcripts written on the papers of the Ministry of Justice dated 1953 were obviously prepared especially for that court case, and afterwards transferred to the office of the Waqf Organization. Of course, the outcome of the litigation and its relation with the Waqf Organization might have some influence on the contents of the transcripts as well as the organization's selection of the remaining documents in the file. However, the file contains no other documents, and it is impossible to know about the litigation.

The contents of the documents and the history of the waqf

Document 1 (1188/1774–1242/1826)

According to the transcripts of this document, the original of the first waqf deed was written on a white paper, with two sheets of blue paper attached to its margin and back.[9] The main deed was recorded on the white paper, while the first statement (*iʿtirāf-nāmah*) of the founder was written on the blue paper of the margin,[10] and the blue paper on the back of the cloth contained his second statement.[11] The main text features a long foreword concerning the uncertainty of this world, before introducing the founder as Ustad ʿAbbas, a builder and the son of the late Aqa Muhammad ʿAli who was living in Tehran, but originally came from Ganjah, a city now located in the Republic of Azerbaijan. It seems that the founder or his father had moved from there to Tehran.

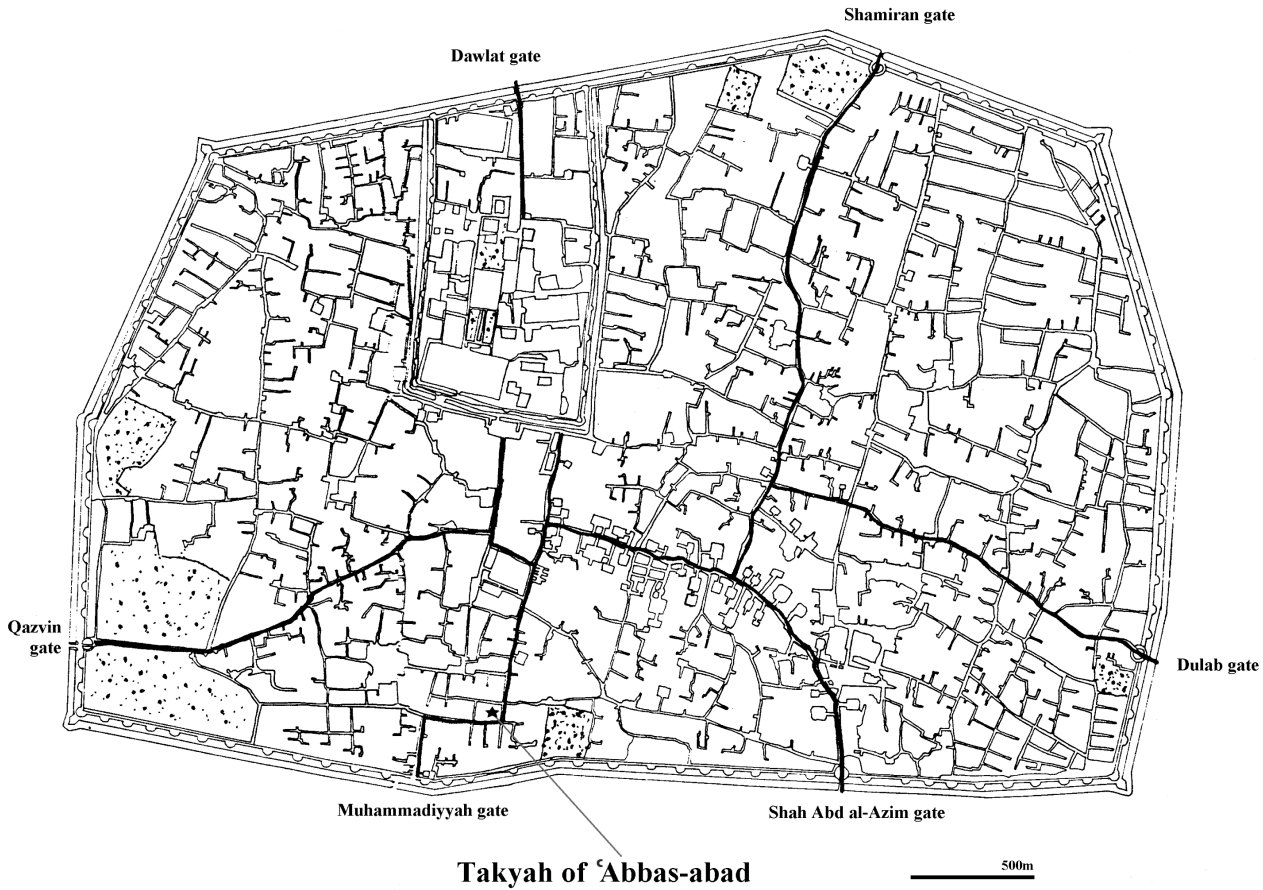
The first statement by the founder which appears on the blue paper attached to the margin, provides details on the origin of the waqf. According to this statement, which has a questionable date, 1188/1774, the founder had purchased a garden (*bāgh*) measuring 2600 *zarʿ*[12] from a certain Yuzbashi Rustam so that he might build a house, a *takyah*, and a *ḥammām* there. The price of the garden was 3 *shāhī* per *zarʿ*, bringing the total price to 39 *tumān*.[13]



Map 6.1 ʿAbbas-abad quarter in the map of 1309/1891

Though the location of the garden is not made clear in the statement, the *ḥammām* is called the *ḥammām* of ʿAbbas-abad in the main text of the deed. The place name ʿAbbas-abad appears in the maps of Tehran near the Bazar.[14] Map 6.1, drawn in 1309/1891, shows the lane and passageway (*guẕar va kūchah*) of ʿAbbas-abad, as well as the mosque and *takyah* of ʿAbbas-abad. Another building on the map, called the "Caravansary of Hajji ʿAbbas" may also be related to the waqf founder. I have indicated its location on Map 6.2, made in 1275/1857. According to these maps, the location of 'Abbas-abad is in the middle of a commercial district, and there are no gardens around this area. However, as we have already seen, a garden did originally exist there, before Ustad ʿAbbas developed the plot and built a house, a public bath, and a *takyah* and so on there around 1188/1774, if the date is correct. Therefore, Ustad ʿAbbas' activity should be considered as part of the urbanization process of Tehran.[15] It is likely that the name of the quarter, ʿAbbas-abad, also derived from Ustad ʿAbbas.[16]

Returning to the main text of the deed, the usual legal clause of a waqf contract,[17] follows the name of the founder. Then, the waqf properties, beneficiaries and stipulations are explained. The waqf has two groups of waqf properties: one is the property for *takyah*, and the other is the property for the founder's descendants. Although the deed does not describe them in order, it is clear which property belongs to which group. The waqf properties consisted of shares of the *ḥammām*, the house (*sarākhānah*), several shops and their sites. For example, one-twelfth share of the *ḥammām* is the waqf property for *takyah*, and



Map 6.2 The city of Tehran and Takyah of ʿAbbas-abad in 1275/1857

the four-sixth share is that for the founder's descendants. Table 6.1 (overleaf) lists the waqf properties found in various sources, including Document 1. Though the text of the deed mentions only one *ḥammām*, a marginal note tells us that there was actually a pair, a large one and a small one. They were counted as one because they used the same boiler and reservoir.[18] Figure 6.1 shows the

Figure 6.1 Composition of endowed properties in Document 1

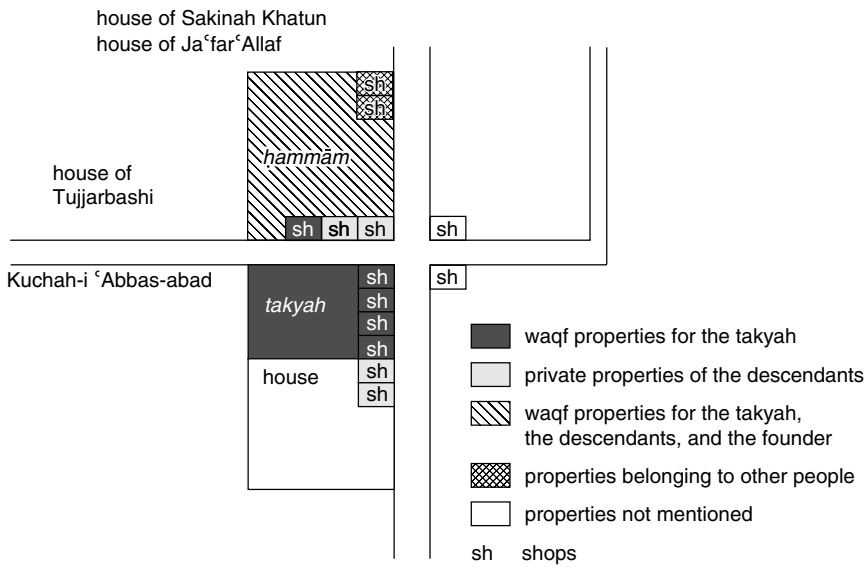


Figure 6.2 Composition of endowed properties in Document 2

Table 6.1 List of the waqf properties found in various sources

	Document 1 (1774?–1826)	*Appendix of Document 1*	*Document 2 (1849)*	*Survey (1853)*	*Document 3 (1854)*	*Survey (1899–1900)*
mawqūfāt for Imam Husayn	a site for building *ḥusayniyyah*	*takyah*		(exists)		(exists)
	a shop in the corridor of the *ḥammām*		a shop attached to a *ḥammām*		1/3 of 2 shops attached to the *ḥammām*	
	a half of a shop under *ḥusayniyyah* and a house		4 shops on the east side of *takyah*	2 *maktabkhānah* 1 grocery 1 soup shop	4 shops	6 shops
	1/12 of *ḥammām* of ʿAbbas-abad	3/12 of *ḥammām*	1/4 of *hammām*	(exists)	1/3 of *hammām*	(exists)
mawqūfat for descendants	a half of a shop under *takyah* and a house the site for the shop above	shops attached to *takyah*				
	a house	a house				
	a shop on the south side of the house a sight for a shop next to above	shops attached to the house				
	4/6 of *ḥammām* of ʿAbbas-abad	4/6 of *ḥammām*	1/3 of *ḥammām*			
	two shops at the intersection					
	a shop in the corridor of the *ḥammām*					
for Ustad ʿAbbas	1/12 of *ḥammām* of ʿAbbas-abad	1/12 of *ḥammām*	1/12 of *ḥammām*			
for Muslims		a water reservoir				

locations of the waqf properties and *takyah*, and we assume that these properties were situated close to each other.

According to the stipulation, the income from waqf for *takyah* was to be spent, first, for the maintenance of the waqf property, second for the maintenance of the *takyah*, and then for the mourning ceremonies for Imam Husayn (*rawżah-khānī* and *taʿziyah-khānī*) performed at the *takyah*. On the other hand, the stipulation states that all income from the waqf for the founder's descendants is to be distributed among the descendants in accordance with Islamic inheritance laws, after the deduction of expenditure necessary for the maintenance of the waqf properties. If there were funds left over, they should be used to purchase more waqf properties, or if that was not necessary, to purchase food and drink for the residents of the quarter and travelers.

The first administrator of the waqf was to be the founder himself. He was then to be succeeded by one of his male descendants. If there were no direct male descendants, the administrator was to be chosen among the male descendants over female lineages of descent. The income reserved for the mutawalli was one-twentieth of the total revenue.[19]

Two more transactions are recorded in the deed. First, the founder sold non-waqf one-twelfth share of the *ḥammām* to Mulla Zayn al-ʿAbidin for 100 dinar. Then Mulla Zayn al-ʿAbidin designated that portion as waqf on behalf of Ustad ʿAbbas. According to the first statement of Ustad ʿAbbas, Mulla Zayn al-ʿAbidin was a scribe employed by Mirza Masih, the jurist who arranged the waqf contract. It is clear that these transactions were made in order to avoid "waqf in favor of the founder," which was prohibited by Twelver-Shiʿite Islamic law.[20] The income of the waqf was to be paid as *radd-i maẓālim* (compensation for illegal transactions),[21] and after the death of Ustad ʿAbbas, the half of the income should be paid as *radd-i maẓālim* and the other half was spent for additional fasting and prayer (*ṣawm [u] ṣalāt*). The other stipulations of this waqf, such as those pertaining to the administration are the same as in the previous endowment.

After the explanation of the transactions the main text ends interruptedly. There is no legal closing formula, such as "*qabẓ u iqbāẓ shud* (the property was transferred)," "*ṣīghah-i vaqf jārī shud* (the formula for the contract was declared)." But the more distinct feature of Document 1 is the absence of a date in the main text of the deed. The marginal note of Mirza Masih explains this fact as follows:

> I, Hajji Mirza Masih, arranged this contract personally. . . . Hajji ʿAbbas has no problem. If anyone says anything against Hajji ʿAbbas to distress him, it shall be illegal under Islamic Law. The contract's validity does not rely on a seal and a written text, even if ordinary people believe that the validity of contracts depends on a seal and a date.[22]

More explanation is found in the second statement of Ustad ʿAbbas written on the blue paper attached to the back of the original deed.

> Mirza Masih arranged the waqf contract. I implored him to fix his seal and date the deed. He replied, "All contracts are declared orally, and not in writing. Even if (the deed) disappeared, the contract remains valid." So I ceased my supplications.[23]

It is true that all contracts are concluded orally under Islamic law, at least in theory.[24] However, almost all the waqf deeds that I have seen carry the seals of ulama and are dated. Moreover, according to Mirza Masih, ordinary people relied on seals and dates as proof of deeds validity.

Concerning this point, a fatwa[25] consisting of a question and an answer from the jurist is written in the margin of Document 2:

> [Question] Mujtahid of Islam, what is your opinion concerning this legal problem? If the date of a waqf deed or other document is confused, does the waqf or other contract with the confused date become invalid, or does it remain valid? Please write the answer on the top of this petition, and attach your noble seal to it so that we will not perish in front of the God and his prophet.
> [Answer] In the name of God, the generous and merciful, if the original waqf or transaction was concluded in a legally correct manner, then even if the date of the deed was confused, the waqf or other transaction itself does not become invalid.[26]

This fatwa apparently is the result of the absence of a date in the main text of the deed. The date of 1188/1774 is to be found only in the first statement of the founder in the margin, which would place the first transaction before the waqf in the period of Karim Khan Zand, while the judicial recognition of his second statement is dated 12 Muharram 1242/16 August 1826.[27] Some doubt arises as to whether the founder and the issuing jurist were still alive fifty-two years after the first transaction. The date 1188 AH is more dubious because it seems to have been written only in *siyāq* numbers in the original deed.[28] They were normally only used for financial accounts and their use for a date could have caused additional mistakes. And if the date 1242 AH is true, it is logical that the second deed was drawn up about twenty years after the first deed.[29] But even so, as the fatwa states, it is not the reason for invalidity of the waqf.

Another problem with Document 1 is a contradiction in the description of the waqf properties (see Table 6.1 and Figure 6.3). A water reservoir that is not mentioned in the main text of the deed was added in the second statement, while the share of the *ḥammām* on behalf of *takyah* increases from one-twelfth to one-fourth. It is not clear whether or not another deed was written for these waqf properties.

In spite of these problems, it is difficult to assert that the deed is totally forged. Though Mirza Masih did not attach his seals to the main text, he attached them to his marginal notes. Mulla Zayn al-ʿAbidin also endorsed and attached their seals in the margin.

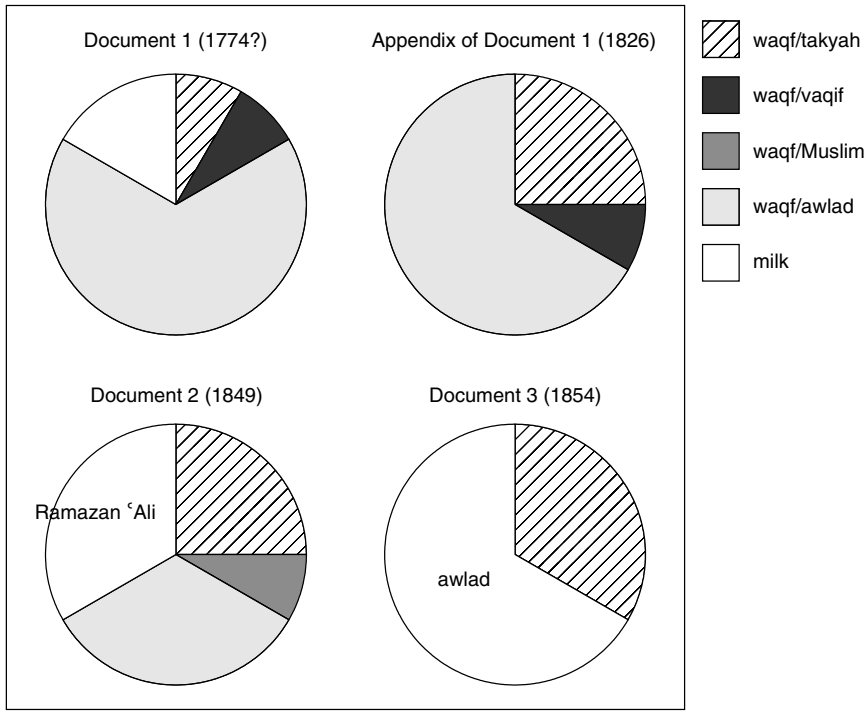


Figure 6.3 Shares in the *ḥammām* of ʿAbbas-abad

Document 2 (1265/1849)

The first part of Document 2 points out that the waqf of the late Ustad ʿAbbas had some serious problems.

> After the death of Ustad ʿAbbas, the following facts came to be known. One and half *dāng* of *ḥammām* and one shop … are the waqf property for *takyah* which he built. He designated it as a waqf for *taʿziyah-dārī*. The declaration of the formula (*ṣīghah*) for a waqf contract, its acceptance (*qabūl*) by the jurist, and the recorded transfer of the properties (*qabẓ u iqbāẓ*), all of which are conditions for the validity of the contract, are not discernible in this case. The employed formula only includes the offer of the contract, assuming that a waqf is among unilateral acts (*īqāʿāt*), as people on the street talk about this problem.[30]

Among the three conditions of a waqf mentioned here, the declaration of the formula and the transfer of the property are recognized by all Twelver-Shiʿi Jurists. However, there are different opinions about the acceptance (*qabūl*) of the beneficiary. If waqf is a unilateral act (*īqāʿ*), it is not necessary to obtain the

acceptance by the beneficiary of the waqf.[31] While Shahid al-Thani (*d*.1559) and Muhaqqiq Sabzavari (*d*.1679) say waqf is a unilateral act and the acceptance is not a condition of waqf, Mirza-yi Qummi (*d*.1816) and Muhammad Hasan Najafi (*d*.1850) recognize that waqf is totally bilateral contract (*ʿaqd*) and the acceptance is indispensable to it.[32] The position of Document 2 is clear: it denies Document 1, claiming that Document 1 is based on an assumption, like people on the street, that waqf is a unilateral act.

As seen previously, Document 1 indicates that the waqf was rightly declared orally, though the main text of the deed was neither dated nor sealed by the jurist, nor did it include such legal closing clauses as "*qabẓ va iqbāẓ*." It is probable that the lack of legal closing clauses and the absence of a seal caused considerable doubt in Document 2. Document 2 considers the existence of written deeds to be more important than indicated in Document 1, and its position is based on what Document 1 denies as the belief of "ordinary people." Here we witness totally different opinions between the jurists of Document 1 and Document 2.

Another major change in Document 2 is the appearance of a contender to the waqf administrator. Akhund Mulla Ramazan ʿAli, the husband of Ustad ʿAbbas's daughter, claimed that he was the executor (*vaṣī*) entrusted to establish the waqf after Ustad ʿAbbas's death. His other claim is that the first waqf contract was invalid because those who had arranged the contract apparently were not mujtahids or deputies of a mujtahid. The recorded transfer of the property (*qabẓ u iqbāẓ*) was not accomplished, either. Then Akhund Mulla Ramazan ʿAli established the waqf by himself, based on his claim, and probably drew up another deed, though it has not been found in the present file. This caused disputes among the residents of the quarter, and Document 2 was set up in order to make the waqf more secure.[33]

One important point of Ramazan ʿAli's claim concerns the system of judicial administration under the Qajars. His claims on the waqf are based on the assumption that only mujtahids and their deputies were entitled to conclude legal contracts, such as waqf-deeds. Of course, the term "mujtahid" does not refer to the four or five ulama of the highest rank as described by John Malcolm,[34] since those who were involved in the conclusion of the present shariʿa contracts were not part of this small number of famous scholars. Here we find a more narrow definition of "mujtahid." Those who could conclude shariʿa contracts were "mujtahids," and the precondition to become a mujtahid would be social recognition.[35] This fact coincides with the case of Tabriz that Christoph Werner describes; all the leading ulama of Tabriz in the early nineteenth century, participated in the promulgation and endorsement of legal deeds. On the other hand, the understanding of the term mujtahid was changed, and the term applied more widely in the course of nineteenth century.[36] We should consider this practice to be a characteristic feature of Qajar society, because we know that the promulgation of contracts in other areas of the Islamic world, both in the Ottoman Empire and in Central Asia, was the task of government appointed qadis.

Retuning to our case, the more complicated situation is described in fatwas in the margin of Document 1 and 2. The first concerns the relationship between an executor and a child waqf administrator.

> [Question] Imami ʿUlama and Twelver-Shiite jurists, May God increase their likes, what is your opinion about this legal problem? A certain Zayd designated some of his property as a waqf, appointed his male descendants as its administrators, and kept the administration over it for his lifetime. At the time of his imminent death, he appointed a certain ʿAmr to be his executor, and entrusted him to transact the child's business concerning the waqf until the young administrator came of age. The founder's child has now reached adulthood. Should the waqf property be entrusted to the rightful administrator, or not? Please make clear God's command so that He will reward them.
> [Answer] After the infant becomes a man, the waqf property should be entrusted to him.
> Seal: His servant, Ismaʿil Musavi.[37]

Another jurist, Muhammad ʿAli Musavi,[38] responded to the same question in the same way. However, he added that if the establishment of the waqf was not yet successfully completed, then the descendants of the founder should divide the waqf property among themselves as inheritance.[39] Here it is clear that at the time of Ustad ʿAbbas's death, his descendants were too young to administrate the waqf, and Akhund Mulla Ramazan ʿAli was in charge of it as the executor during some years. But now that the descendants reached adulthood, they tried to recover their position as administrator. Then Ramazan ʿAli began to claim that the waqf was invalid.

In two other fatwas someone asks whether it would be legally correct if a child contracted a conditional sale (*bayʿ-i sharṭ*) of his own property, and eventually was obliged to forfeit his rights completely.[40] Two jurists reply that such a transaction is not valid, and that the buyer should not be allowed to take possession of the property, since a child is not allowed to transact anything.[41] The backgrounds of the fatwas are not so clear, but probably Akhund Mulla Ramazan ʿAli had tried to usurp the property on the pretext of foreclosing a mortgage from ʿAbbas's son and daughter. In either case, the fatwas support the position of the son and daughter to keep hold of the property.

Despite the efforts made by Akhund Mulla Ramazan ʿAli, no fatwa in either Document 1 or 2 supports his claim. All legal opinions recognize the waqf in question as valid, or at least rule that the property should be entrusted to the sons and daughters of Ustad ʿAbbas.

However, the fact that a new waqf deed (i.e. Document 2) was drawn up indicates a reconciliation between Akhund Mulla Ramazan ʿAli and Mulla Ghulam Husayn, the son of ʿAbbas. It may also reflect the existence of a power balance between them, since it would only be natural that Ramazan ʿAli, who

had had the property at his disposal for a long time, enjoyed an advantage. Document 2 states that it the second waqf declared supposing that rumors (*shahrat*) and ʿAbbas's will (*viṣāyat*) were true and previous waqfs were invalid. This time the new waqf was declared correctly with the acceptance of jurists, and Shaykh ʿAbd al-Husayn Shushtari, one of the high-ranking ulama and *imām jumʿah*s in Tehran,[42] Ramazan ʿAli and other trustworthy persons agreed with the new waqf.

At the beginning of the this second waqf deed, Mulla Ghulam Husayn who also acts as agent (*vakīl*) for his sister, Sakinah Khatun Khanum, transfers to Akhund Mulla Ramazan ʿAli, the husband of Sakinah, a one-third share of the *ḥammām*. The deed states that the hammam was among the private possessions they had inherited from their father, although it was actually part of the waqf endowed on behalf of them according to Document 1.

In a second step, Mulla Ghulam Husayn and Sakinah Khatun Khanum whom he represents legally, designated their property, including a one-fourth share of the *ḥammām*, as waqf once again on behalf of those who perform the mourning ceremony for Imam Husayn at the *takyah*. Based on ʿAbbas's will and rumors, Ghulam Husayn and his male descendants are appointed as waqf administrators and their stipend is set at one-tenth of the total income, while the male descendants of Sakinah Khatun Khanum are made waqf supervisors (*nāẓir*) with stipends amounting to one-twentieth of the total income. The priority of expenditures is first the repair of the *takyah* and the endowed properties, followed by the stipends of the administrator and supervisor, and then by the costs of *rawżahkhānī* and *taʿziyah* to be held during the first ten days of Muharram, and providing food and drink for residents and passers-by (*ibn-i sabīl*).[43]

Turning to the property transformed into waqf, Table 6.1 shows that four shops on the east side of the *ḥammām* were new entries. Figures 6.1 and 6.2 confirm their position as being situated along Guzar-i ʿAbbas-abad. On the other hand, the waqf properties on behalf of the descendants in the first deed, such as the shops and house mentioned in Document 1, are not included in the second deed. They already may have been considered as private possessions by the descendants of Ustad ʿAbbas.

Also, only a one-third share of the *ḥammām* is mentioned as waqf property for the descendants in Document 2. However, the deed does not concern the waqf for the descendants, nor did it explain its stipulations. According to the deed the waqf was based on "other valid documents (*navishtijāt-i muʿtabar-i alāḥidah*)," which might include Document 1. In other words, the conditions of the waqf for the descendants were not changed by Document 2 because the waqf had not been challenged by Ramazan ʿAli.

The income from the remaining one-twelfth is not mentioned as waqf at all, but should be spent under some "procedural instruction" (*dastūr al-ʿamal*) without a seal and a date.[44] Thus Document 2 became the main waqf deed, with other previous documents including Document 1 considered as supplements to it. As seen above, according to Document 1, this one-twelfth must be spent on

behalf of Ustad ʿAbbas, and divided in half after his death: one half to be paid as *radd-i maẓālim*, the other for additional fasting and prayers.[45]

The other evidence that indicates that Document 1 was not totally abolished is the endorsement of a famous jurist, Hajji Mulla Muhammad Jaʿfar Chalmaydani (*d.*1295/1878) of Tehran. He endorsed not only Document 2 but also Document 1 at the same date.[46] A few other famous jurists also endorsed Document 2, including Aqa Muhammad Mahdi Mujtahid Kalbasi (*d.*1278/1861–2) of Isfahan,[47] and Hajji Mirza Abu al-Qasim Imam Jumʿah of Tehran (*d.*1272/1855).[48] It is surprising that a jurist of Isfahan endorsed the deed though the waqf property and *takyah* was located in Tehran. However, there is no doubt that all these endorsements confirmed the authority of the deed.

The building survey of 1269/1853

A building survey of Tehran carried out in 1853 gives us precious additional information about the waqf from an independent source. First we find the *takyah* and the *ḥammām* of ʿAbbas-abad among the buildings in the Bazar quarter, one of the five quarters of the city.[49] The survey also tells us that there were seventeen *takyahs* in the Bazar quarter and fifty-four all over Tehran at the time and that there were thirty-four *ḥammāms* in the Bazar quarter and 153 throughout Tehran.[50]

Two *maktabkhānah*s (traditional primary schools),[51] a grocery store and a soup shop are mentioned in the part pertaining to Guzar-i ʿAbbas-abad as the endowed properties for the *takyah*.[52] These four shops correspond to the new entries which first appeared in Document 2. The survey seems to have ignored the shop attached to the *ḥammām* mentioned in both Documents 1 and 2 as waqf property for the *takyah*.

Moreover, such property as endowed for the descendants, i.e. the house and the shops, are also omitted in the survey. Instead, we can find private property at Guzar-i ʿAbbas-abad owned by Mulla Ghulam Husayn: nine shops[53] and three houses. Two of the houses were being rented out.[54] It is only natural to assume that originally a part of these shops and houses had been property endowed for the descendants in Document 1. The survey confirms the fact that the waqf properties mentioned in Document 1, but not in Document 2, were now considered to be the private property of Mulla Ghulam Husayn.

Document 3 (1270/1854)

The date of this document, 1207 AH, is clearly mistaken, since Ustad ʿAbbas and Akhund Mulla Ramazan ʿAli were already dead when it was written. The date should therefore be read as 1270 AH, which in fact is noted in the margin. This means that the third deed was recorded five years after Document 2.

The situation leading to the composition of Document 3 is explained in the first part of the deed.

> Since *Hājj*, the late Hajji ʿAbbas, in all his goodness, wanted to support especially *rawżah* and *taʿzīyah* for Imam Husayn . . . among all of his pious deeds, four shops, 2 *dāng* of a public bath named Hammam-i ʿAbbas, and 2 *dāng* of a total 6 *dāng* of two shops attached to the bath, whose borders are mentioned below, remained as waqf after his death. For a time, the late Akhund Mulla Ramazan ʿAli, his executor, and ʿAbbas' descendants managed the property as waqf. Because of the disputes among the executor, the descendants and others, a *mistake* occurred.[55]

There are some very interesting points here. First, the document explains the process of how the waqf was established very vaguely. It does not mention the existence of neither Document 1, nor Document 2. It states only that the property was waqf at the time of the death of ʿAbbas, and that there was a dispute between the executor and the descendants. Nor is it clear what is the "mistake."

Second, the waqf property is slightly different from that of Document 2. Referring to Table 6.1, the share of the *ḥammām* has been changed from one-fourth to one-third. The one-twelfth share, which was established as waqf for the founder, was probably added to the endowments for Imam Husayn. On the other hand, one whole waqf shop attached to the *ḥammām* was changed to a one-third share of two shops. The reason seems to be that a new shop was built and attached to the *ḥammām*, and thus the previous waqf share of the *ḥammām* was adjusted accordingly. The waqf property designated through Document 3 is exactly in accordance with this explanation.

Turning to the text of the deed, we understand that the founders are the same as in Document 2: Mulla Ghulam Husayn who also acts as agent for his sister, Sakinah Khatun Khanum. The waqf property is explained as described above and recorded as if no previous documents had ever existed. The income of the property is divided in portions for necessities and the repair of the property and the *takyah*, then for stipends totaling one-tenth for the waqf administrator and one-twentieth for the waqf supervisor. The descendants of Mulla Ghulam Husayn are designated as the administrators, while those of Sakinah Khatun Khanum as supervisors, just as in Document 2; however, one-sixth of the total income, which is slightly more than the administration and supervision grants, is apportioned for *muṭlaq-i vujūh-i birr* (funds for all the charities), an item that did not appear in Document 2. The rest of the income is to be expended for *rawżah-khānī* and mourning ceremonies to be held at the *takyah* and things related to them, like coffee and *qaliyān*.[56]

But a bigger change from Document 2 occurs in the ownership of the *ḥammām*. While in Document 2 one-third had been transferred to Mulla Ramazan ʿAli and another one-third had been endowed for the descendants, Document 3 clearly states that the remaining two-thirds shall be the private property of the descendants (see Figure 6.3). It is only natural that Mulla Ramazan ʿAli's one-third share disappeared together with his loss of control over

the property after his death. It may be natural because "the descendants" may include those of Sakinah Khatun Khanum and Mulla Ramazan ʿAli.

However, the point is that the one-third share of the *ḥammām* that had been waqf property for the descendants was being turned back into the private property of the descendants. Was it possible to convert waqf property into private possession legally?

Our sources do not tell us in what manner the waqf share for the descendants was converted into their private property. It is possible that legal transactions were carried out, but the documents related to them must have been lost. However, maybe we should not consider this case as a conversion of waqf to private property, since Document 3 totally ignores the content of previous documents including Documents 1 and 2. In other words, the deed that was newly drawn up was not at all influenced by the preceding documents because it considers them as having "a mistake." It became possible to sell the share of the *ḥammām*. Here the waqf deed seems again to be something like a deed of reconciliation: once the situation changed, it was drawn up all over again.

Unfortunately it is difficult to identify the ulama who endorsed Document 3,[57] meaning that the document was endorsed by minor ulama in contrast to Document 2. Moreover, none of the endorsements was dated after 1270/1854, which raises another question.

After Document 3

Although Document 3 was drawn up in 1270/1854, and none of its endorsements date beyond 1270/1854, three endorsements dated after 1270/1854 are to be found in Document 2. One of these later endorsements, dated 1287/1870, was written by Aqa Sayyid Sadiq Tabataba'i (*d*.1300/1883), a leading jurist in Tehran:[58]

> The waqf mentioned occurred correctly in the way written here, and is valid. The heirs also testified accordingly.[59]

Another leading jurist, Mirza Murtaza Sadr al-ʿUlamaʾ,[60] wrote an endorsement dated 1293/1876,[61] in which he agrees with the legality of the deed, and attests that the previously made endorsement and seal of his brother Hajji Mirza Abu al-Qasim Imam Jumʿah was authentic. The third post-1270/1854 endorsement was written by a jurist named Hajji Mirza Hasan Mujtahid[62] in Jumada II 1300/April–May1883. On the basis of the deed and related testimony, he confirms the authenticity of the deed and the position of Mirza Muhammad, son of Mulla Ghulam Husayn as waqf-administrator, since Mirza Muhammad is the only male descendant.

The question, however, is why prominent ulama continued to endorse Document 2 instead of the more recent deed of Document 3. It is likely that Document 2 was considered to be still valid, even after Document 3 was drawn

up. We know that at least Aqa Sayyid Sadiq Tabaṭabaʾi and Hajji Mirza Hasan Mujtahid met the descendants, heard their testimony, and then confirmed the authenticity of Document 2. There is no mention of Document 3 in the endorsements or text of Document 2. Here we can not help thinking that the descendants honored both Documents 2 and 3, but showed only the former to the ulama who endorsed it after Document 3 was drawn up. This may suggest that Document 2 was more acceptable for the descendants than Document 3, and that they relied on it rather than Document 3. If this hypothesis is true, the different stipulations between Documents 2 and 3, i.e. the share of waqf property for *takyah*, the status remaining share of the property, and the new item of *muṭlaq-i vujūh-i birr*, must be the reason.

Nevertheless, it seems that at least the change in the number of waqf shops transacted in Document 3 was implemented. According to the building survey of 1317/1899–1900, the *takyah* had six shops that were waqf property.[63] That is to say, the survey recognized the two shops attached to the *ḥammām* as waqf, though the survey of 1269/1853 had ignored one such shop.

It is surprising that all the three documents were registered at the waqf office in the years between 1915 and 1922. Husayni Bulaghi's description of the waqf published in 1350/1971–2 forces us once again to raise the question of whether to prefer Document 2 to Document 3, or the other way round. Using the list of waqf properties compiled by the Waqf Organization, he explains that the waqf in question was founded in 1207/1792–3 and contains as its waqf property six shops and one-fourth share of the *ḥammām*, which had been converted into a small garden and a coffee shop and covered four hundred square meters.[64] The date, 1207/1792–3 is the mistaken date of Document 3, and the number of waqf shops also corresponds to Document 3; but the waqf share of the *ḥammām* and his description of it seem to be based on Document 2.

Since some of the transcripts of the documents are written on stationery provided for plaintiffs and dated 1953, it would only be natural to suppose that the case was not settled before that date. It has no doubt been very difficult for the Waqf Organization to deal with such complicated transactions.

Conclusion

Such is the process by which one set of waqf deeds was drawn up in succession in order to systematically change arrangements previously made. The changing conditions behind the waqf, such as the shifting power balance between various contenders vying for control over the waqf properties, affected considerably the rewrites of the deeds. In other words, the deeds are the products of reconciliation among the contenders.

This case of an original deed and two subsequent rewrites seems to indicate a rather chaotic situation within the judicial administration system of Qajar Tehran. We should, in fact, also take into consideration that such documents as ʿAbbas's will and Ramazan ʿAli's waqf deed have been lost along the way and

could possibly reveal an even more complicated process of judicial action. If we assume, however, that the documents cover most of the transactions related to the waqf in question, what were the major factors underlying the legal disputes?

First, there was a difference of opinions among jurists concerning waqf contracts. According to Islamic law, at least in theory, only oral contracts are valid, while written documents are subordinate to them. The first jurist takes this position and recognized the validity of the waqf, although he did not stamp his seal on the first deed, nor date it. However, the second jurist considered it invalid because the waqf contract is not a unilateral act, but a bilateral contract, and it needs the acceptance by jurists. For him, the defects in the written document were crucial. In sum, there was no consensus among the jurists concerning such an extremely basic problem. Here we can see one of the characteristics of early Qajar ulama: they were independent of governmental institutions, and each of them made a legal decision by his own opinion. And if so we have to examine how the situation changed after the emergence of a *marjaʿ-i taqlīd*, the supreme religious authority of Shiʿism in the mid-nineteenth century.[65]

The second factor is related to the archival control of waqf deeds under the Qajars. In Document 2, the existence of Document 1 is mentioned, although different jurists arranged the contracts. However, there is no mention of either Document 1 or 2 in Document 3, which recognizes facts quite different from the previous two documents. At the time Document 3 was drawn up, the jurist may have disguised the facts contained in previous documents, but otherwise we can suppose that he did not refer to them. Also, the jurists who endorsed Document 2 after Document 3 was drawn up did apparently not refer to Document 3.

Such a series of events shows that the system of the control of waqf deeds allowed beneficiaries to keep the original deeds in their possession and show them to jurists only when they considered it necessary. It is not clear whether the jurists who arranged contracts would always make copies of deeds for their own use; but even if they did so, such documents must have been personal copies kept in the hands of the ulama who had arranged the contract. Thus, no other mujtahid could have accessed these private collections. This is the reason why jurists wrote their endorsements and fatwas in the margins of the deeds, because if they had not done so, no one could have referred to them later on. Of course, here we can also observe the influential authority of individual Qajar mujtahids. The absence of state officials in the course of drawing up deeds shows that the state did not yet intervene in such cases, leaving all the details up to the mujtahids.

This Qajar system contrasts clearly with the Ottoman system, under which qadis were appointed by the state to arrange contracts and registered them in ledgers. The Ottoman-type "Shariʿa court register" was kept by governmental authorities and was easily referred to by later qadis. However, under the Qajars, mujtahids recognized by society would arrange contracts, and keep related documents in their possession or allow the beneficiaries to keep the documents. The contradictions that exist among the documents introduced in this chapter

may be explained as stemming from the absence of an Ottoman-style judicial bureaucracy in Qajar Iran. This is not to say that the Qajar state did not try to institute a system of deed registration in the course of its modernization.[66]

Notes

1 I am grateful to Dr. Christoph Werner for reading the early draft of this chapter and giving me valuable comments.

2 For overview of the waqfs of Qajar Tehran, Parvānah Shāh Ḥusaynī, "Vaqf- shināsi-i Jughrāfiyā-yi Shahr-i Tihrān: Dawrah-ʾi Qājār va Pahlavī," *Taḥqīqāt-i jughrāfiyā* 11/3(1375/1996): 117–132; idem. "Radyābī-i Vaqf dar Sākhtār-i farhangī-i Shahr-i Tihrān az Dawrah-ʾi Qājār tā Jumhūrī-i Islāmī, *Taḥqīqāt-i Jughrāfiyā* 13/1 (1377/1998): 111–119. Manṣūrah Ittiḥādiyyah, "Mawqūfat-i Tihrān va Taḥavvul-i Shahr (1269–1320h.q.)," in Manṣūrah Ittiḥādiyyah, *Īnjā Ṭihrān Ast: Majmūʿah-i Maqālāt-i darbārah-i Ṭihrān* (Tehran: Nashr-i Tarikh-i Iran, 1377/1998–9), 177–193. The last one was reprinted in special issue on Tehran of *Mīrāṯ-i Javīdān* (no.28 [1378/2000]: 7–16). As the study of individual waqfs in Qajar Tehran, Christoph Werner, "Zanān-i Vāqif dar Tihrān-i ʿAhd-i Qājār," trans. Nasīm Majīdī Qahrūdī, *Mīrāṯ-i Javīdān* no.28 (1378/2000): 115–122. See also my forthcoming article "The Vaqf and Religious Patronage of Manūchihr Khān Muʿtamad al-Dawlah" in the Proceedings of the Conference "Religion and Society in Qajar Iran" held by the British Society of Persian Studies. In article of *Encyclopaedia of Islam*, Ann K.S. Lambton describes the Qajar waqfs as "not notable," but it is probably because only a small numbers of the documents had been published until recently. At least her description on the waqf of the Sepahsalar madrasa in Tehran is totally mistaken. *Encyclopaedia of Islam*, new ed., s.v. "Waḳf III. In Persia."

3 An excellent example is: Christoph Werner, *An Iranian Town in Transition: A Social and Economic History of the Elites of Tabriz, 1747–1848* (Wiesbaden: Otto Harrasowitz Verlag, 2000), Chap 3. See also, idem., "A Safavid Waqf in Qajar Times: The Ẓāhirīya in Tabriz," in *Matériaux pour l'histoire économique du Monde Iranien* ed. Rika Gyselen and et Maria Szuppe (Paris: Association pour l'avancement des études iraniens, 1999), 233–248.

4 See, Werner, *An Iranian Town,* 99–122; idem "A Safavid Waqf."

5 For example, the waqf deed of Manuchihr Khan was first written in the reign of Fath ʿAli Shah, and then drawn up again in the reign of Muhammad Shah. See Kondo, "Manūchihr Khān." See also, Umīd Riżāʾī, "Tajdīd-i Vaqf-nāmah: Bā nigāhī bah Vaqf-nāmah'hā-yi Ustān-i Kirmān," *Mīrāṯ-i Jāvīdān*, no. 37 (1381/2002) pp. 131–136.

6 Research on this article was carried out in the archives of the Waqf Organization in 1998. I am grateful to the authorities of the Waqf Organization for permitting me to use its archives, and to their staff in Tehran for helping me with my research. Special thanks are due to Mr. Umid Rizaʾi for his help in reading the documents and for the fruitful discussions with him. As a published catalogue of part of the collection, ʿImād al-Dīn Shaykh al-Ḥukamāʾī, "Asnād-I Vaqf-i Ustān-i Tihrān dar Bāyigānī-i Markazī-i Sāzmān-i Awqāf va Umūr-i Khayriyyah," *Mīrāṯ-i Jāvīdān* no. 28 (1378/2000): 141–167.

7 Documents of Tehran Province, No. 434.

8 Unfortunately, pages 2 and 3 of my photocopy of version C are illegible.

9 Document 1.

10 The transcripts introduce this statement differently: Document 1-A. "The written statement of Ḥajji ʿAbbas, the *vāqif* of the Takyah of ʿAbbas-abad; 1-B 'The blue paper attached to the margin.'"

11 This second statement is found only in Document 1-B.
12 A *zarʿ* is a unit of length measuring about one meter. Here it refers to a unit of square measure, i.e. a square *zarʿ*.
13 Documents1-A and 1-B.
14 Gitāshināsī, *Atlas-i Kāmil-i Shahr-i Tihrān* (Tehran: Gitashinasi, 1371/1992), 287. This location should not be confused with ʿAbbas-abad Avenue in the north of Tehran, now called Muttahhari Avenue.
15 Mirza Saliḥ Shirazi stated in 1227/1812, "There were some gardens in Tehran, but now people purchase them to build their houses on." Mīrzā Ṣāliḥ Shīrāzī, *Majmūʿah-i Safarnāmahʾhā-yi Mīrzā Ṣāliḥ Shīrāzī*, ed. Ghulām Ḥusayn Mīrzā Ṣāliḥ (Tehran: Nashr-i Tarikh-i Iran, 1364/1985), 31–32.
16 Mirza Masih calls him "the builder (*bānī*) of ʿAbbas-abad" in Document 1.
17 "*Vaqf-i ṣahīḥ-i sharʿī va ḥabs-i mukhallad-i millī-i islāmī gardānīdand*."
18 Document 1-A and 1-C.
19 Document 1.
20 Muḥaqqiq al-Ḥillī, *Tarjumah-i Fārsī-i Sharāʾ al-Islām*, trans. Abū al-Qāsim b. Aḥmad Yazdī, ed. Muḥammad Taqī Dānishpazhūh (Tehran, Intisharat-i Danishgah-i Tihran, 1374/1986), 350; Laleh Bakhtiyar, *Encyclopedia of Islamic Law: A Compendium of the Views of the Major Schools* (Chicago, ABC International Group, 1996), 260.
21 If one makes a profit from illegal transactions, he or she has to pay it to the poor as *radd-i maẓālim*, even after his/her death. See, Mīrzā Abū al-Qāsim Qummī, *Jāmiʿ al-Shatāt*, ed. Murtaẓā Raẓavī, 4 vols. (Tehran, Intisharat-i Kayhan, 1371/1982–1375/1986–7) 1:195–196. This term along with *ṣawm u ṣalāt* is also found in wills (*vaṣīyat-nāmah*) frequently. See, Werner, *An Iranian Town*, 363, 366; Qummī, *Jāmiʿ al-shatāt* 4:283. See also Christoph Werner, "Merchant's Testaments: Vasiyatnames as a Souce on Religious Life in Late 19th Century Iran," which will be published in the Proceedings of the Conference "Religion and Society in Qajar Iran." Mirza-yi Qummi prohibits waqfs including *radd-i mazālim* and *ṣawm u ṣalāt* for the *vāqif*, because they are "waqf endowed in favor of founder." See, Qummī, *Jāmiʿ al-shatāt* 4:112, 136–137
22 Document 1. The original text reads: *īn daʿī kih Ḥājjī Mīrzā Maṣīḥ mī-bāsham ijrā-yi ṣīghah-i khud namūdam . . . ʿālī qadr Ḥājjī ʿAbbās ḥarfī nīst aṣlan bal-kih khilāf-i sharʿ ast, har gāh ḥarfī bizanand kih mawjib-i azīyat-i Ḥājjī ʿAbbās bashad. va sharṭ-i ṣīghah iʿtibār-i muhr va khaṭṭ nabuvad. shāyad ʿavām al-nās iʿtiqād-ishān bar īn bashad kih iʿtibār-i ṣīghah iʿtibār-i muhr va tārīkh ast*.
23 Document 1-B. The original texts: *Ḥājjī Mīrzā Maṣīḥ dāma ẓilluhu al-ʿālī kih ijrā-yi ṣīghah-ʾi vaqf rā īshān namūdand. khāhishī namūdam kih ba-muhr-i sharīf muzayyan kunand va tārīkh ham qarār bidahad. farmūdand kih kull-i ṣiyaq* [sic. for *sighah*] *malfūẓī mībashad na maktūbī. har gāh mafqūd shavad ṣīghah baham namī khurad. li-hāẕā khāhish-i khud guẓashtam*.
24 Joseph Schacht, *An Introduction Islamic Law* (Oxford: Clarendon Press, 1964, rep. 1993), 193.
25 The term fatwa in Qajar Iran has not been adequately discussed, and only few fatwa documents have been published. See Muhammad Khalid Masud, Brinkley Messick, and David S. Powers ed. *Islamic Legal Interpretaion: Muftis and their Fatwas* (Cambridge, Mass.: Harvard University Press, 1996), 13–14. Here I use the term as a legal opinion on general matters, like Ottoman fatwas, while *ḥukm* indicates a legal opinion in a specific case. For another example of a Qajar fatwa, see Masīḥ Ẕabiḥī and Manūchihr Sutūdah, *Az Āstārā tā Istārbād*, vol. 6 (Tehran: Anjuman-i Asar-i Milli, 1354/1976), 253–254.
26 Document 2-A. The original text reads: *dar ṣūratīkih aṣl-i vaqf yā muʿāmilah bi-ṭarīq-i ṣaḥīḥ vāqiʿ shudah bāshad bi-dast khurdan-i tārīkh-i kāghaẕ aṣl-i vaqf yā muʿāmililah bāṭil namī-shavad*.

This fatwa carries three transcribed seals: one was illegible for the scribe; one belongs to a certain Muhammad Husayn al-Husayni, and one to Sayyid Murtaza b. Muhammad Muhsin al-Husayni al-Hasani, who held the title of Sadr al-ʿUlama and was a member of the Imam Jumʿah family of Tehran. See Muḥammad Ḥasan Khān Iʿtimād al-Salṭanah, *al-Maʾāṣir va al-Āṣār*, vol. 1 of *Chihil Sāl-i Tārīkh-i Īrān dar Dawrah-i Pādishāhī-i Nāṣir al-Dīn Shāh*, ed. Īraj Afshār (Tehran, Intisharat-i Asatir, 1363/1984–5), 213.

27 "So, the above-mentioned Ḥajji ʿAbbas made his statement in front of this servant of the Shariʿa once again." Though the scribe could not read the seal, it apparently belonged to Mirza Masih.

28 The date appears only in *siyāq* in Document 1-B, while in Document 1-A contains both Persian numbers and *siyāq*, but the *siyāq* is written incorrectly in the latter.

29 In that case, the jurist who arranged the first waqf might have been the well-known Mirza Masiḥ Astarabadi, the powerful mujtahid of Tehran, who incited the people to attack Griboedov in 1829. After the event he fled to ʿAtabat where he died in 1263/1846–7. It may be natural that the first waqf got into trouble in his absence. See, Mahdī Bāmdād, *Sharḥ-i Ḥāl-i Rijāl-i Īrān dar Qarn-i 12 va 13 va 14 hijrī*, 3rd edn. (Tehran, Zavvar, 1363/1984–5), 4:100–101; Mīrzā Muḥammad ʿAli Muʿallim Ḥabīb-ābādī, *Makārim al-Āṯār dar Aḥvāl-i Rijāl-i Du Qarn-i 13 va 14 hijrī*, 7 vols. (Isfahan, Nashr-i Nafaʾis-i Makhtutat and Anjuman-i Kitabkhanah-i ʿUmumi-i Isfahan, 1337/1958–1374/1985), 5:1700.

30 Document 2. The original text reads: *ijrā-yi ṣīghah-i vaqf va qabūl-i ḥākim-i sharʿ va qabż va iqbāż kih sharṭ-i ṣiḥḥat-i vaqf ast dar ān ghayr-i maʿlūm ḥattā ijrā-yi ṣīghah maḥż-i ījāb bar taqdīrīkih vaqf az īqāʿāt bāshad chinānkih qawl-i shāriʿ ast dar īn masʾalah*.

31 Bakhtiyar, *Encyclopedia*, 244–245, 251, 253–254; Nādir Riyāḥī Sāmānī, *Vaqf va Sayr-i Taḥavvulāt-i Qānūnguzārī dar Mawqūfāt* (Shiraz: Intisharat-i Nuvid, 1378/1999–2000), 45–48, 55–63. See also Sayyid Aḥmad Tūysirkānī, "Pazhūhish dar Masʾalah-ʾi Qabż va Qabūl dar ʿAqd-i Vaqf," *Mīrāṯ-i Jāvīdān* no.31/32 (1379/2000–2001): 29–32.

32 Riyāḥī Sāmānī, *Vaqf va Sayr*, 56–58; Tūysirkānī, "Qabż va Qabūl," 29–31. See also Qummī, *Jāmiʿ al-Shatāt*, 4:28–33, 42–43.

33 Document 2.

34 John Malcolm, *History of Persia* (London; John Murray, 1829), 2:313–315. A re-evaluation of this description in Werner, *An Iranian Town*, 239–241.

35 It has been said that the status of mujtahid can only be achieved by public recognition although the term "mujtahid" has been understood differently. See Moojan Momen, *An Introduction to Shiʿi Islam*: *The History and Doctrines of Twelver Shiʿism* (New Haven: Yale University Press, 1985), 203.

36 Werner, *An Iranian Town*, 231–234, 239–240.

37 Document 1. The original text reads: *chah mī-farmāʾīd ʿulamā-yi imāmīyah va fuqahā-yi iṯnāʿashrīyah kaṯṯara allāh amṯālahum dar īn masʾalah-i sharʿiyah kih har gāh Zaydī baʿżī az amlāk-i khud rā vaqf bi-kunad va tawliyat-i mawqūfah rā vāguẕār ba-awlād-i ẕukūr naslan baʿd nasl namāyad va mā dāma al-ḥayāt-i khud būdah va dar ḥayn-i fawt ʿAmrī rā vaṣī-i khud kardah kih ba-umūrāt-i ṣaghīr rasīdagī namāyad tā ṣaghīr kabīr shavad va ḥāl saghīr kabīr shudah ayā vaṣī amlāk-i mawqūfah rā bāyad ba-taṣarruf-i ḥaqīqī bi-dahad yā nah? ānchah ḥukm-i allāh ast bayān bi-farmāʾīd kih ʿanda allāh bī-ajr na-khāhad būd./ baʿd kih ṣaghīr kabīr shud va rashīd bāyad mawqūfah rā bah ū sipārand. ʿAbduhu Ismaʿīl Mūsavī.*

It is characteristic for fatwas to mention persons as ʿAmr and Zayd instead of using particular names.

This Ismaʿil Mūsavi might be Sayyid Ismaʿil Musavi Bihbahani, whom Nasir al-Din Shah invited from Najaf to Tehran in 1278/1861–2, where he died in 1295/

1878. See Muʿallim Ḥabīb-ābādī, *Makārim*, 3:863–864; Shaykh Muḥammad Ḥirz al-Din, *Maʿārif al-Rijāl fī Tarājum al-ʿUlamāʾ wa al-ʿUdabāʾ*, ed. Muḥammad Ḥusayn Ḥirz al-Dīn (Qum: Marashi Najafi, 1405/1984–85), 1:107.

38 I have not come across this person in any other sources.

39 Document 1.

40 Conditional sale refers to contracts whereby the seller can pay the buyer a higher price after a certain interval of time and retake possession of the merchandise. If the seller cannot pay the buyer back during that interval, the merchandise will become the property of the buyer. Such a transaction can be understood as a kind of credit or loan transaction. This practice is one of the common *ḥiyal* (legal evasions) for avoiding *ribā* (interest) prohibited by Islamic Law. See, Hāshim Rajabzādah and Eura Kinji ed. *60 Sanad-i Fārsī az Dowrah-yi Qājār* (Tokyo, The Institute for the Study of Languages and Cultures of Asia and Africa, 1999) ix–x; Parwiz Owsis, *Formation of Contract: A Comparative Study under English, French, Islamic and Iranian Law* (London: Graham and Trotman, 1994), 238; Schahat, *Introduction*, 79.

41 Document 1-B (Ismaʿil Musavi); Document 2 (Muhammad ʿAli Musavi).

42 Iʿtimad al-Salṭanah, *al-Maʾāṯir*, 214.

43 Document 2.

44 Document 2.

45 Document 1.

46 Iʿtimād al-Salṭanah, *al-Maʾāṯir*, 189. The date of his endorsement is 21 Rajab 1265/12 June 1849.

47 Iʿtimād al-Salṭanah, *al-Maʾāṯir*, 188; Muʿallim Ḥabīb-ābādī, *Makārim*, 6:2197. His endorsement is dated 21 Rajab 1266/ 2 June 1850.

48 Iʿtimād al-Salṭanah, *al-Maʾāṯir*, 191; Muʿallim Ḥabīb-ābādī, *Makārim*, 2:547. His two endorsements, one is Arabic and the other is Persian are not dated. Another jurist named Shaykh ʿAbd al-Rahim, who endorsed the deed in 1266/1849–50 might be Shaykh ʿAbd al-Raḥim Burujirdi (*d*.1277/1850). See Iʿtimād al-Salṭanah, *al-Maʾāṯir*, 214; Muʿallim Ḥabīb-ābādī, *Makārim*, 6:2144–2145.

49 Manṣūrah Ittiḥādiyyah and Sīrūs Saʿdvandiyān ed., *Āmār-i Dār al-Khilāfah-ʾi Tihrān*: *Asnādī az Tārīkh-i Ijtimāʿī-i Tihrān dar ʿAṣr-i Qājār* (Tehran: Nashr-i Tarikh-i Iran, 1368/1989–90), 172–173.

50 Ibid.38, 172–173.

51 At that time there were fifteen *maktabkhānah*s in Tehran and only three, including the two belonging to the waqf, were in the Bazar quarter. It is noteworthy that the *maktabkhānah* was not supported by a waqf, but was rather considered as a shop and therefore a resource of the waqf. This means that *maktabdār*s (teachers) would rent the building. For a description of a *maktabkhānah* in Qajar Tehran, see Jaʿfar Shahrī, *Tārīkh-i Ijtimāʿī-i Tihrān dar Qarn-i Sīzdahum: Zindigī, Kasb, va Kār*, 5 vols. (Tehran: Intisharat-i Ismaʿiliyan, 1367/1988–9–1368/1989–90), 4:447–456.

52 Ittiḥādiyyah and Saʿdvandiyān ed., *Āmār*, 180.

53 Ibid. The shops consist of a barbershop, a fruit shop, a Russian shoemaker, a greengrocery, a retail dealer, a mending shop, a dyer, a grocery store, and a carpenter.

54 Ibid.145. The tenants were low ranking bureaucrats: Shatir Aqa Jan Shirazi and Mashhadi Akbar Farrashkhalvat.

55 Document 3.

56 Document 3.

57 There are five ulama endorsements in Document 3: two seals were declared illegible by the scribe, and the others belong to "*al-rājī Muḥammad ibn ʿAbd allāh*," "Muhammad Riza al-Husayni," and "*al-mutawakkil alā allāh ʿabduhu Abū al-Qāsim*."

58 See Iʿtimad al-Salṭanah, *al-Maʾāṯir*, 202; Bamdad, *Rijāl*, 6:121–122.

59 Document 2 endorsement dated 21st Jumada I 1287/20 August 1870.

60 About him, see Iʿtimad al-Salṭanah, *al-Maʾāṯir*, 213.
61 Endorsement dated 21st Shaʿban 1293/ 11 September 1876.
62 He is probably Ḥajji Mirza Ḥasan Mujtahid Ashtiyani (d.1319/1901), another leading jurist in Tehran. See Ḥirz al-Din, *Maʿārif*, 1:238–241; Bamdad, *Rijāl* 1:316–317.
63 Ittiḥādiyyah and Saʿdvandiyān ed., *Āmār*, 515.
64 Sayyid ʿAbd al-Ḥujjat Ḥusaynī Bulāghī, "Tārīkh-i ʿUmūmī-i Tihrān," *in Tārīkh-i Tihrān*, vol. 2 (Qum, 1350/1971–2), 63.
65 For recent studies on *marjaʿ-i taqlīd*, see Kazemi Mousavi, *Religious Authority*, chap 6; Meir Litvak, *Shiʿi Scholars of Nineteenth-century Iraq:The ʿUlamaʾ of Najaf and Karbalaʾ* (Cambridge: Cambridge University Press, 1998) 64–70. For the role of ʿAtabat ulama in another legal dispute in Qajar Tehran, see Nobuaki Kondo, "The Case of 'Doubled Vaqf': A Study on Qajar Shariʿa Courts," paper submitted to the international symposium "The Dynamism of Muslim Societies: Toward New Horizons in Islamic Area Studies" held on 5–8 October 2001 at Kisarazu Arc, Japan.
66 Muḥammad Taqī Dāmghānī, *Ṣad Sāl Pīsh az Īn: Muqaddimahʾī bar Tārīkh-i Ḥuqūq-i Jadīd-i Īrān* (n.p.:Intisharat-i Shabgir, 2537/1978),121–149. First attempted to register shariʿa documents at governmental offices made in 1858, but it is not clear whether waqf deeds were also registered or not. Ibid., 39; *Rūznāmah-i Vaqāyiʿ al-Ittifāqiyyah*, no.407 (11 Rabiʿ II 1275/18 Nov. 1858): 4.

Part IV

FROM CITIES TO VILLAGES

7

IRRIGATION EXAMINED THROUGH DOCUMENTS OF QAJAR IRAN

Hashem RAJABZADEH

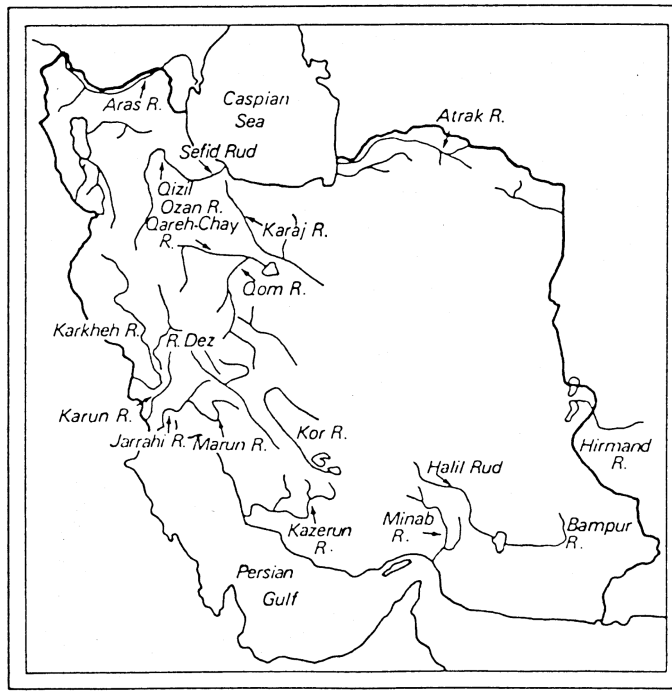
Introduction

An exciting part of my small library is a modest collection of documents of Qajar Iran (eighteenth and nineteenth centuries) I bought some ten years ago from a dealer in second-hand books. Having apparently come from the abandoned records of a notary public's office of the time, and belonging mostly to the Kashan and Qazvin regions, the collection contains almost all kinds of documents drawn up to record transactions, endorse legal deeds and actions, or settle disputes arising among people as to their social rights and responsibilities. Much of the collection consists of documents endorsing a marriage or a rural land transaction. Still, the diversity of subjects in this collection allows arrangement of the documents into some twenty-five categories, with the aim of examining and studying each topic separately.[1] This is a brief introduction on the Iranian irrigation and related documents in my collection.

Climate and water

The extreme climate and scarcity of water make irrigation the most important factor for farming in Iran. Petroshevsky considers the great number of technical terms found in Persian on agricultural water to be an indication of the importance of irrigation for the country.[2] McLachlan describes certain agricultural conditions in Iran as follows (see Map 7.1):

> The Iranian plateau constitutes a vast area of diverse geographical characteristics. Its center is taken up by two major deserts, the Dasht-i Kavir lying to the north and the Dasht-i Lut lying to the south of a low mountain zone which runs from Khurasan in the east to Ardistan in the west .... The extremely inhospitable environment of the deserts permits only scattered and limited areas of cultivation. Underground sweet water is scanty and rainfall negligible.[3]



Map 7.1 River system of Iran (after McLachlan)

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Available statistics put the total amount of water received annually by the country at about 320 billion cubic meters (BCM), of which amount the surface water irrigation potential is around 77.5 BCM. In most of the country rainfall is under the 250-millimeter precipitation line, which generally marks the boundary between dry farming areas and areas dependent on irrigation.[4]

Given that water is the major limiting factor in agriculture for a dry country like Iran, it is natural that irrigation is regulated in detail by law and custom. "By law water can not be bought and sold; it is only the channel through which the water flows and right to use it that can be sold."[5] Therefore, the present documents always make reference to the channels and beds of streams through which water flows, as the subjects of various transactions.

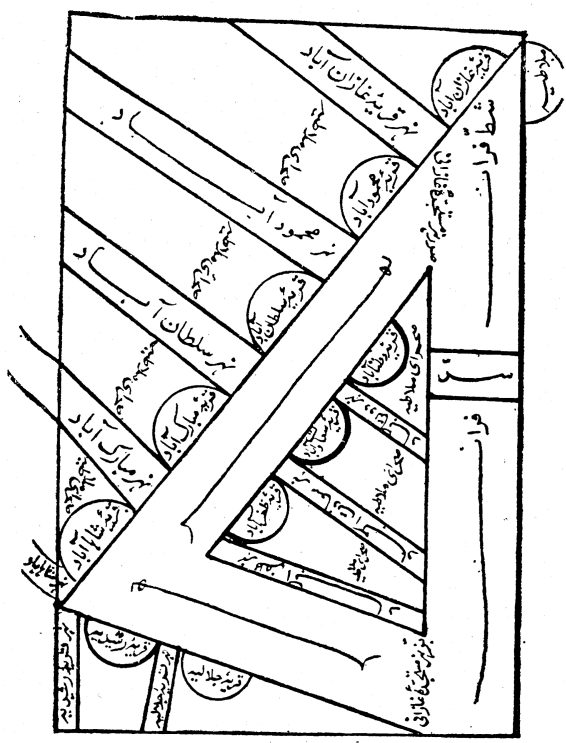
In Islamic tradition, great rivers are considered the property of the nation represented by the state. The owner of a spring, a *kārīz* or *qanāt*, a well or a canal cannot prevent travelers or flocks from using his water, but no one can use it for irrigation purposes without first obtaining his permission. It is perhaps because of this limitation on the ownership right that the question of water is dealt with under the topic of unclaimed things (*ḥiyāzat-i mubāḥāt*).[6] "In certain areas (including Yazd) the ownership of land and water is separated."[7]

Rivers

In Islamic law, water is traditionally divided into three categories, as coming from rivers, wells, or springs. Petroshevsky quotes from Hamd Allah Mustawfi the four types of irrigation the author of *Nuzḥat al-Qulūb* has referred to, namely, irrigation by hand, by a river, by a *qanāt*, and by a well.[8] Rivers are further subdivided into streams and irrigation channels.[9] From great rivers, the water of which suffices for all needs of cultivation, anyone can join a channel to irrigate his lands.

In a letter (No. 40) to his son Jalal al-Din, the governor of Rum, Rashid al-Din Fazl Allah (*d*.718/1318), the Grand Minister of three Ilkhans, instructs the son to lead off an irrigation channel from the Euphrates to be named *Nahr-i Mustajidah-i Ghāzānī* and establish on its banks ten sizable villages to be inhabited by farmers brought from Rum and other countries and settled there (see Map 7.2).[10]

In another letter, addressed to dignitaries of Diyarbakr, Rashid al-Din advises that he is sending Khwajah Masʿud, a trusted man in his administration, to build a new water channel from the Tigris in the Mosul (al-Mawsil) area, to be named



Map 7.2 Nahr-i Mustajdah-i Ghāzānī (after Rashid al-Din, *Savānih*)

Nahr-i Mustajidah-i Rashīdī, and establish fourteen walled villages on its banks, each village named after one of Rashid's fourteen sons (see Figure 7.3).[11]

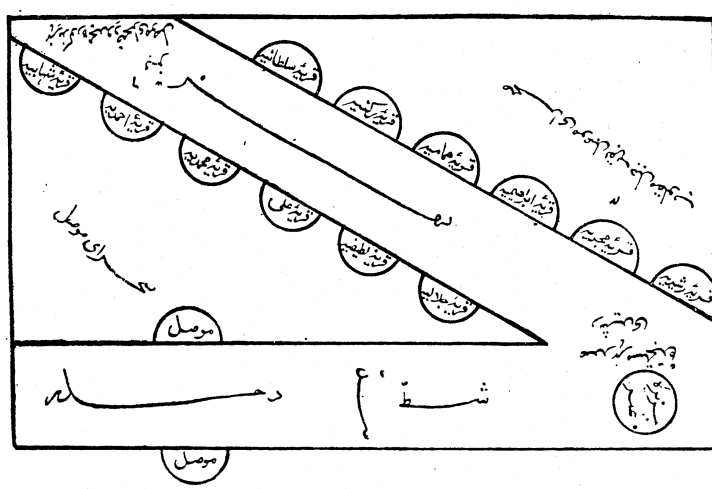
Great rivers are considered the property of all Muslims. However, as Lambton explains, lesser rivers are

> subdivided again into (1) those the water of which is sufficient to be led off without dams to irrigate the land situated along the river banks, and from which canals to irrigate other lands can only be led off if such action does not prejudice the position of the lands situated along the banks, and (2) those in which barrages have to be made, in which case lands situated higher up the river have a prior right to those situated lower down.[12]

Canals are dug to bring water to dead (*mawāt*) lands. These canals belong to those who dug them.[13] Expert statements made in several of the present documents on disputes about water allude to this right. The systems for dividing the water of a river, as described by the Islamic jurists, were in common use in Qajar Iran.

The water of a river or channel is divided either by a dam or sluice dividing the water into a certain number of shares, by rotation by days or hours, or by an opening or outlet hole through which the water flows from the main source into a stream or each plot of land.[14]

Ancient dams dividing the water from rivers exist in many parts of Iran. Notable among these dams are Band-i Qaysar (i.e., Caesar) built by the Sasanian king Shahpur I (241–272 AD) near Shushtar in Khuzistan, and Band-i Amir, near Shiraz, built during the reign of ʿAzud al-Dawlah (338–73/949–82) of Daylamites.



Map 7.3 Nahr-i Mustajdah-i Rashīdī (after Rashid al-Din, *Savānih*)

The system of division of Zayandah Rud, as related by Lambton, "is traditionally attributed to the Safavid period, and is based on a document supposed to originate in the time of Shah Tahmasp (930–84/1524–76)."[15] An example of dividing the water of a river is the addition of 1.5 *sang*s of the water of Tajan-Rud to the water right of the village Marmet by decree of the governor of the area (see Document 1).

Responsibility for the upkeep of rivers entered into division, and the maintenance and cleaning of channels are normally with the owners of the channels.

*Qanāt*s

Due to the scarcity of surface water, in the history of Iranian agriculture *qanāt*s have been the main source of water. As Lambton says,

> These *qanāt*s are underground conduits which, by using less slope than that of the soil surface bring water to the surface. The *qanāt* starts in a water-bearing layer at a depth of from 50–80 ft. to as great as 300 ft. In the upper section the *qanāt* collects through one or more galleries; in the lower section, it conducts the water through dry layers to the spot where it reaches the surface. From this point it continues as an open channel. The cross section of a *qanāt* is some 4 ft. high and 21.2–3 ft. wide. The excavated soil is lifted to the surface through vertical wells . . . Where the water-bearing layer is deep and the slope of the country slight, the *qanāt*s are lengthy . . . The end well of a *qanāt*, i.e. that farthest away from where it comes to the surface, is known as the *mādar chāh*.[16]

Petroshevsky refers to a special type of *qanāt*, the water of which was taken from a river in which a channel could not be branched out due to rising ground.[17]

*Qanāt*s, found in most parts of Iranian plateau, have existed for thousands of years, spreading from the core of Iranian civilization eastward into Asia and westward into North Africa and Europe.[18] Familiarity with the technique of *qanāt*s was considered indispensable for men in power. Ghazzali, quoting from the ancient sages, says that an understanding of underground waters and ways to excavate them is knowledge required in royal secretaries.[19]

Some sources give exaggerated figures for the number of *qanāt*s in Persia and their depths. In one estimate, Khurasan alone has had 42,000 *qanāt*s.[20] Yazd has always been noted for its *qanāt*s, and the people of the city commended for their skill in constructing them.[21] Rashid al-Din refers to many *qanāt*s in Yazd, Azerbaijan, and other areas of Persia as part of properties on which he founded a waqf to Rabʿ-i Rashidi.[22] In one of his letters he instructs his son Jalal al-Din, the governor of Rum, to undertake a sizable development project in Sivas including the excavation of four large-scale *kārīz* (i.e., *qanāt*s) to be named *Qanavāt-i Rashīdī*, on which, together with other charitable establishments, he later founded a waqf to the *dār al-siyādah* (the house of sayyids) of the city.[23]

Sharing and rotation

The number of shares into which the various *qanāt*s are divided varies. While Lambton states that "in Kashan *qanāt* water is divided into 12 *sahm* or shares each of 12 *dāng*, making 144 *dāng* in all"[24] and "the rotation varies between 9, 12, and 15 days according to the *qanāt*,"[25] the documents below show that the division in the area is more diverse.

In those villages of Kashan bordering the desert, the rotation of water is based on *rawziqah* (one day or twenty-four hours) with the number of days varying from one village to another. In Qamsar, the rotation is fifteen days, the first day being called *rawziqah-i avval* and the last one *rawziqah-ʾi pānzdahum*. In other parts of the area the rotation varies from ten to sixteen days.[26] In documents belonging to villages and farms of Kashan in the present collection, references are made to *ṭāq* or shares of water varying in number from twelve to twenty-four and each named after a farmer, apparently its initial owner. The *qanāt* of Niyasar is divided into 30 *ṭāq* (document dated Rabiʿ al-Avval 8, 1332 AH). The same document shows that one *ṭāq* is subdivided into 12 *ṭasūj*. One *ṭāq* is generally divided into 75 *surjah*, as seen in the villages of Ghiyas-abad (document dated Safar 19, 1342 AH) and Muhazzab-abad of Bidgul (document dated Safar 8, 1352 AH). The *qanāt* irrigating the farm of Fin and divided to 12 *ṭāq*, is subdivided into 900 *surjah* (document dated Safar 10, 1345 AH), while the water provided by the *qanāt*s of Mughar is divided into 300 *sahm* or shares.

The existing rotation system dates back for centuries. In his *Guzārish-i Kavīr*, Naʾini mentions the division of a *qanāt* shared by the three villages of Kabudan, Fahra, and Rah-miyan made in the mid-seventh/thirteenth centuries by the noted scholar Khwajah Nasir al-Din Tusi when passing through Ardistan accompanying Hulagu in his expedition to the west.[27]

Al-i Ahmad makes a reference to the primitive rotation of water existing in Sagz-abad, a village near Qazvin, saying: "This seven *sang* of [available] water is divided to 12 *ṭāq* or six days, and each *bunah* waters its fields in rotation from sunset to sunrise or from dusk to dawn. The priority order in watering the fields is decided by casting lots (*pishk*) among the farmers. The two *qanāt*s irrigating the fields of Ibrahim-abad, a nearby village, are divided and distributed exactly the same way except that here they draw lots by paper to decide the priority order . . . Inside each *bunah* also the water is divided into hours."[28]

Supervision of water distribution was usually the responsibility of *mīrāb*, who sometimes built a power base on this key position; many generations of the same family often held the position.[29]

Maintenance

*Qanāt*s cost a large amount of money and labor to construct, and they require constant care and regular maintenance to keep them functioning in good order.

These lifelines of Iran's agriculture are traditionally well tended by their owners. As Karajī advises,

> the maintenance works to keep a *qanāt* flowing are mainly to dredge and clean its conduit. Especially the end of the underground channel where the water comes to the surface should be well attended and regularly cleaned, since this spot is more easily massed by mud and covered with moss. Wells of a *qanāt* should have a protective rim around them and their heads have to be covered during the winter. A substantial cleaning work should be done at the beginning of each year (early in the spring).[30]

In another chapter of his work Karaji explains how the blocked channel of a *qanāt* could be opened.[31]

The cost of the upkeep of a *qanāt*, usually considerable, depends on the type of soil through which it flows and the length of it. "If a *qanāt* flows through soft soil, not only is constant cleaning required, but also hoops of baked clay have to be inserted in the tunnel to prevent subsidence."[32] The owner usually shoulders the maintenance expenses of a *qanāt*. The many documents of the present collection that record contracts of renting some shares of a *qanāt* invariably state that the maintenance expenses of an underground channel are totally, or in excess of a small and nominal franchise, the responsibility of its owner.

Disputes

It is not an exaggeration to say that most disputes in rural areas originated over the sharing of water and water rights. These disputes, often ending in injury and death, could drag on for decades if not settled through peaceful means such as arbitration, conciliation or a definitive judicial decision. Examining complaints about water sharing and settling the disputes that arose were major tasks of the Islamic clergy in rural areas and even in cities.

In *Landlord and Peasant in Persia*, Lambton writes:

> Practices connected with *qanāt*s probably go back in part to customary law and pre-Islamic times. Gardizi (*d*. around 453/1061) in the *Zayn al-Akhbār* . . relates that in the time of ʿAbdullah b. Tahir, who was governor of Khurasan from 213–30/828–44, disputes about *kārīz* were continually taking place. In the books on *fiqh* (law) and in the Traditions of the Prophet there was nothing about *kārīz* and rules for the distribution of their water. Accordingly Abdullah assembled all the jurists (*fuqahā*) of Khurasan and some from Iraq to write a book on the laws of *kārīz*. This book, according to Gardizi, was called the *Kitāb-i Qunī*. It was extant in his time."[33]

A number of documents in the present collection contain statements or judicial decisions (fatwa) by Islamic jurists trying to make judgments based on Islamic law and tradition in cases brought before them.

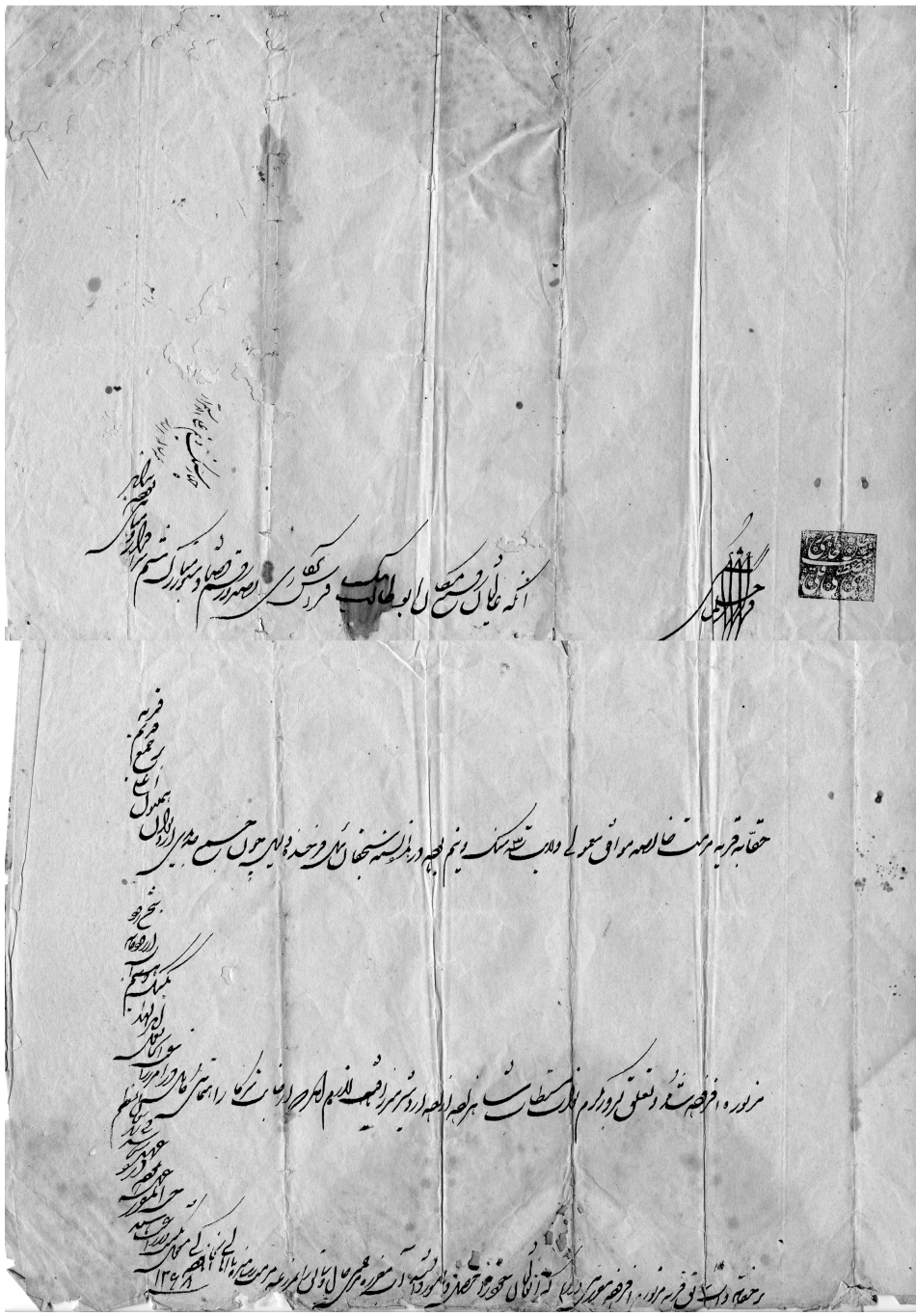


Figure 7.1 Document 1

Document 1

Persian text

(مهر) ظل خدای را رهی مصطفی قلی است

(۱) حکم والا شد آنکه عالیشان رفیع مکان ابو طالب بیک فراش سرکاری بصدور رقم قَضا دستور مُبارک شیَم سرافراز و مباهی بوده بداند (۲) حقابه قریه مِرمت خالصه موافق معمولی ولایت سه سنگ و نیم بوده در هذه السنه سیچقان ئیل فرخنده دلیل چون جمع جدیدی از دیوان همایون اعلی بر جمع قدیم قریه (۳) مزبوره افزوده شده و تعلیق بسرور مکرّم نُواب مستطاب شاهزاده آزاده اردشیر میرزا یافت لازم آمد که از جانب سرکار اهتمامی کامل در امر زراعت آنجا بعمل آید لهذا یک سنگ و نیم آب از رودخانه تجن رود (۴) بر حقابه و آب سابق قریه مزبوره افزوده مقرر می داریم که آنعالیشان خود را محصل و مامور دانسته آب مقرره مرحمتی حال و سابق را بمزرعه مرمت رسانیده تا اهالی آنجا بآسودگی مشغول بکشت و زراعت باشند حسب المقرر عمل نموده در عهده شناسند فی شهر شعبان المعظم سنه ۱۲۶۸

English translation

(seal) … Mustafa Quli

(1) By the lordly order, Abu Ṭalib Beg, the royal servant, … is hereby advised that (2) the Crown Land (*khāliṣah*) village of Marmat's share in the water (of the river) was, according to the local practice, 3.5 *sang*s. Since from the present year a new levy (3) is to be collected from the village in excess of the existing one, the proceeds of which have been granted to … His Royal Highness Ardashir Mirza, and you are obliged to make (4) your utmost efforts in the farming of the village, a share of 1.5 *sang*s of Tajan Rud river (4) is added to the water right of the village (to help its development). You are commissioned to direct the old and the new shares of water to the field so that its farmers might peacefully engage in cultivation. … In the month of Shaʿban of the year 1268 AH.

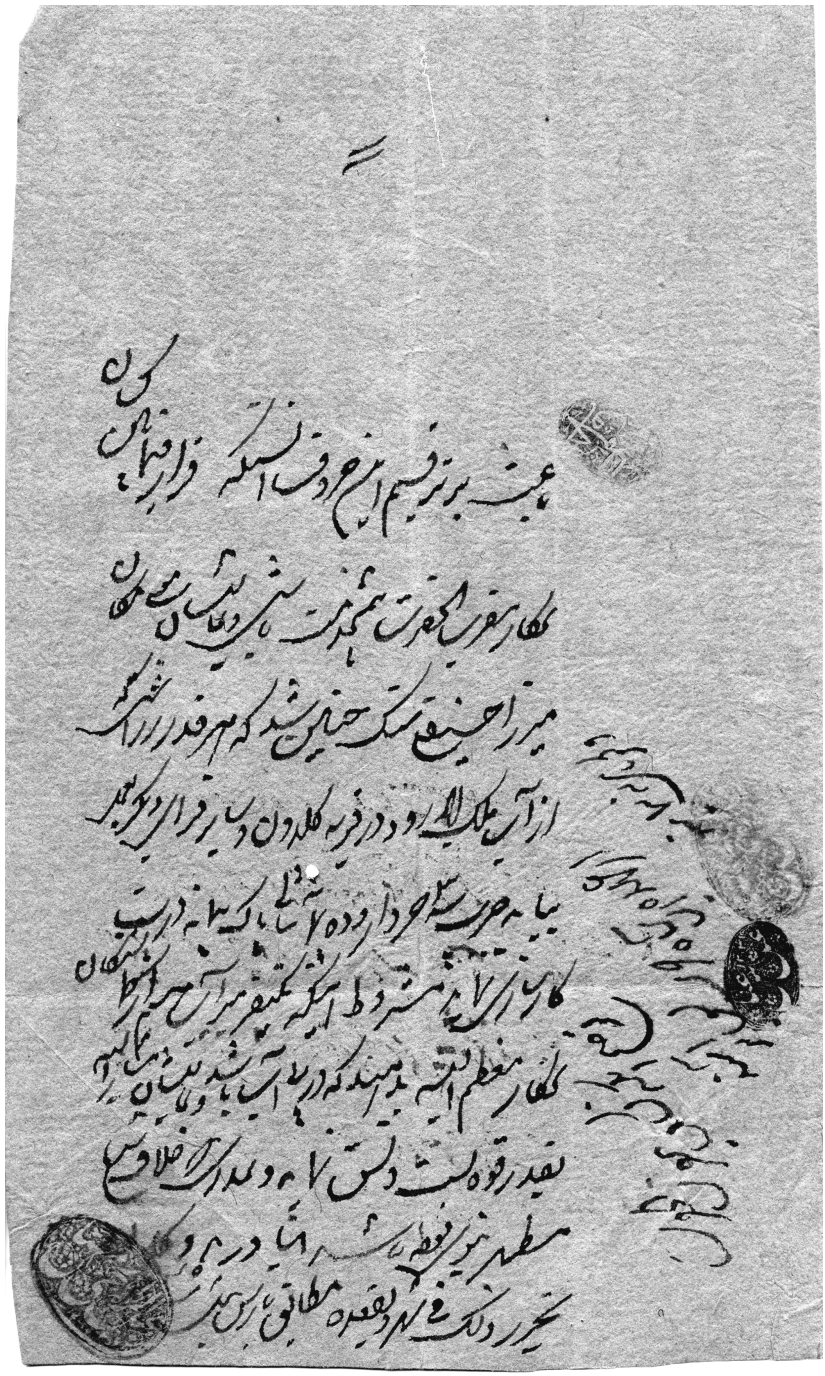


Figure 7.2 Document 2

Document 2

Persian text

(۱) هو (۲) باعث بر ترقیم این حروف آنست که قرار فیمابین کسان(۳) سرکار مُقَرَّب الحضرت پیشخدمت باشی و عالیشان مُعَلّی مکان (۴) میرزا حسینقلی بیک چنین شد که هر قدر برداشتی که (۵) از آب ملک آباد رود در قریه کلدون و سایر قرای دیگر بعمل(۶) بیاید جریب سه خروار و ده پیمانه شالی پاک پیمانه درست (۷) کار سازی نماید مشروط بر اینکه یک نفر میراب نیز از گماشتگان (۸) سرکار مُعَظَّم الیه بدهند که در پی آب باشد و عالیشان مشار الیه (۹) بقدر قوه بَست و نَسَق نماید و عذری که خلاف شرع (۱۰) مُطَهّر تبوی باشد نیاورند و کان(۱۱) تحریر ذلک فی شهر ذیقعده مطابق بارس ئیل
(مهر) عبده الراجی رمضان ۱۲۴۶

English translation

. . (2) It is hereby confirmed that an agreement was made between the men (3) of His Honor . . . Pishkhedmat-bashi and (4) Mirza Husayn Quli Beg to the effect that for each *jarīb* (5) irrigated in Kaldon and other villages using the water of Malikabad-rud (6) [a charge of] three *kharvār*s and ten *paymānah*s of *shālī* (7) be paid, provided that a *mīrāb* is appointed (8) to supervise the [flow of] water and (9) His Honor do his best to regulate the supply (10) of water without [resorting to] any excuse unacceptable in Islamic Law (11) done in the month of Zu al-qaʿdah . . . (seal) abduh al-rājī Ramazan 1246.

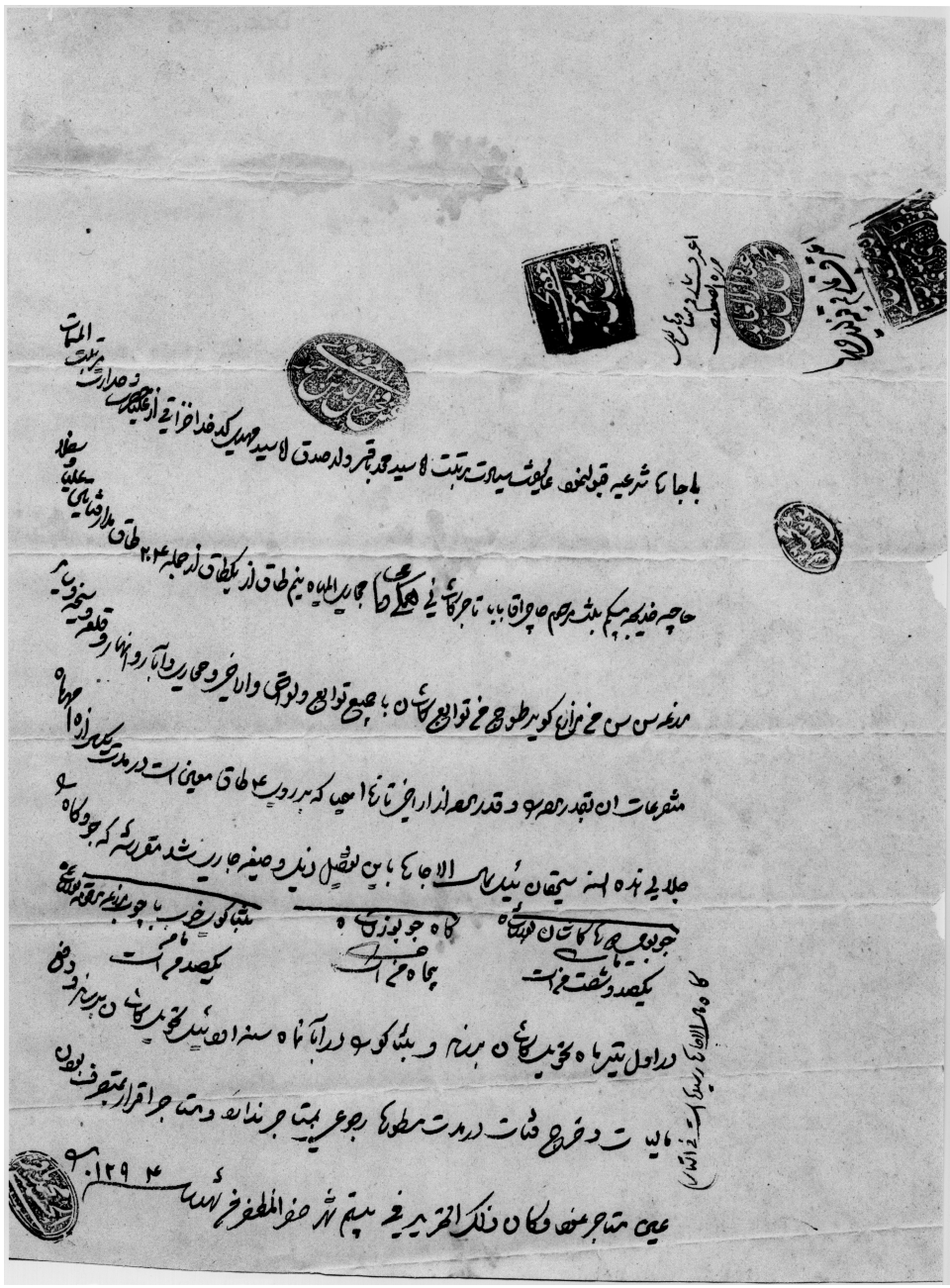


Figure 7.3 Document 3

Document 3

Persian text

(۱) باجاره شرعیه قبول نمود عالیحضرت سیادت مرتبت آقا سید محمد باقر ولد صدق آقا سید مهدی کدخدا خزاقی از علیا حضرت وخدارت مرتبت المسمّات (۲) حاجیه خدیجه بیگم بنت مرحوم حاجی آقا بابا تاجر کاشانی همگی وتمامی مجری المیاه نیم طاق از یک طاق از جمله ۲۴ طاق مدار قناتین عُلیا و سُفلا (۳) مزرعه سن سن من مزارع کویر طسوج من توابع کاشان با جمیع توابع ..(۴).....از اراضی تازه احیا که بر روی ۴ طاق معیّن است در مدت یک سال از ۱۵ مهرماه (۵) جلالی هذه السنه سیچقان ئیل بمال الاجاره باین تفصیل....

(۶)جو بومی دوره کاشن بوزن شاه	کاه جو بوزن شاه	تتباکو خوب با چوب مزرعه مرقومه بوزن شاه
(۷) یک صد و شصت من است	پنجاه من است	یک صد من است

(۸).....

(۹) مالیات و خرج قنات در مدت مسطوره رجوعی به مستاجر ندارد ....(۱۰).....بیستم شهر صفر المظفر من شهور سنه ۱۲۹۴

(مهر) محمد باقر الحسینی

English translation

(1) [This is to confirm that] . . . Sayyid Muhammad Baqir . . . rented from (2) . . . Hajiyah Khanum Begum . . . the share of a half *ṭāq* out of the whole 24 *ṭāq*s of the upper and lower *qanāt*s of (3) Sen-sen farmland, a part of Kavir-i Tasuj farms of Kashan area . . . (4) . . . from the newly developed lands irrigated by 4 *ṭāq*s for a period of one (5) Jalali (= solar) year starting Mehr 15 (October 7) for a rent (in kind) as follows:

(6) Barley of Kashan region, Straw of barley Tobacco of good quality
(7) 160 *man-i shāh* 50 *man-i shah* 100 *man-i shah*
(8) . . .
(9) Taxes and [maintenance] expenses of the water channel during the period . . . have nothing to do with the lessee (farmer). . . .
(10) at this date of Safar 20, the year 1294 AH (seal) Muhammad Baqir al-Husayni

Figure 7.4 Document 4

Document 4

Persian text

(۱) فبعد...

(۲)...حاضر شد عزت دثار محمدت خصال آقا علی اکبر ابن مرحوم اسمعیل مندعلی بیک ساکن قریه (۳) موغار در حال کمال عقل و شعور و رضا و رغبت تمام ... (۴) راضیاً عالماً قاصداً مختاراً مصالحه صحیه شرعیه نمود با عزت دثار آقا حسین ابن مرحوم (۵) میرزا طرقی شهره ساکن قریه مرقومه مقروناً بقبوله کما هو طریقته فی الشرع (۶) الشریف همگی و تمامی ممار و مجاری یک ربع سهم میاه از جمله سیصد سهم کل قنوات (۷) قریه مرقومه که نوبت شربش در شبانه روز سیم ....مقرر است خالی و مجرد از املاک (۸) الاّ املاک دشت چوهه ...بثمن و مال المصالحه مبلغ هشت تومان...

English translation

. . . (2) Āqā Alī-Akbar, . . . a resident of the village Mughar, appeared in person (3) and in a sound state of mind and out of his real will and intention . . . (4) gave in a *muṣālahah* (transaction) to . . . Aqa Husayn, . . . (5) a resident of the same village, . . . all the quarter share (6) of the water channels he owned out of the whole 300 shares of the *qanāt*s (7) of the village the rotation of which (a quarter) share is on the third day, excluding lands attached to the channels (8) except Dasht-i Chubah . . . for the price of eight *tūmān*s.

Notes

1 I have already co-edited two volumes, on official correspondence and rural land transactions respectively. Hāshim Rajabzādah and Koichi Haneda, *55 sanad-i fārsī az dawrah-yi qājār* (Tokyo: the Institute of the Study of Languages and Cultures of Asia and Africa, 1997); Hāshim Rajabzādah and Kinji Eura, *66 sanad-i fārsī az dawrah-yi qājār* (Tokyo: the Institute of the Study of Languages and Cultures of Asia and Africa, 1998). (Persian Document Series, Nos. 1 and 2.) The forthcoming volume will be related to irrigation.

2 Iliya P. Petroshevski, *Kishāvarzī va Munāsibāt-i Arżī dar Īrān-i ʿAhd-i Mughūl*, trans. Karīm Kishāvarz (Tehran: Muʾassasah-ʾi Mutaliʿat va Tahqiqat-i Ijtimaʿi, 1344/1966), 1:199.

3 Keith McLachlan, *The Neglected Garden: The Politics and Ecology of Agriculture in Iran* (London: Tauris, 1988), 13.

4 Oddvar Aresvik, *The Agricultural Development of Iran* (New York: Praeger, 1976), 11, 65.

5 Ann. K. S. Lambton, *Landlord and Peasant in Persia* (Oxford: Oxford University Press, 1969), 210.

6 Ibid.

7 Ibid., 220.
8 Petroshevsky, *Kishāvarzī*, 201.
9 See Lambton, *Landlord*, 210
10 Rashīd al-Dīn Faẓl-ullāh Hamadānī, *Savāniḥ al-Afkār (Makātīb)*, ed. Muḥammad Taqī Dānish-Pazhūh (Tehran: Kitabkhanah-ʾi Markazi va Markaz-i Asnad-i Danishgah-i Tihran, 1358/1979–80), 224–225.
11 Ibid., 222–223.
12 Lambton, *Landlord*, 211–212.
13 Ibid.
14 Ibid., citing Māwardī.
15 Ibid., 212.
16 Lambton, *Landlord*, 217.
17 Petroshevsky, *Keshāvarzī*, 217.
18 Henri Goblot, *Qanāt, Fannī barā-yi Dastyābī bah Āb*, trans. A. Sarv-qad-i Muqaddam and Muḥammad Ḥusayn Papulī-i Yazdī (Mashhad: Muʿabinat-i Farhang-i Astanah-i Qudds-i Razavi, 1371/1992–3), 143.
19 Abū al-Ḥāmid Muḥammad Gazzālī, *Naṣīḥat al-Mulūk*, ed. Jalāl al-Dīn Humāʾī (Tehran: Anjuman-i Asar-i Milli, 1351/1972), 189–190.
20 Petroshevsky, *Kishāvarzī*, 216.
21 Ibid. 225–226; Lambton, *Landlord*, 188.
22 See, for example, Rashīd al-Din, *Vaqf-nāmah-i Rabʿ-i Rashīdī*, eds. Muḥammad Mīnuvī and Īraj Afshār (Tehran: Anjuman-i Asar-i Milli, 1356/1977), 55, 63, 56, 69.
23 Rashīd al-Din, *Savāniḥ*, 144.
24 Lambton, *Landlord*, 216.
25 Ibid. 219.
26 See Mahdī Ṣadrī, "Istilāḥāt-i Kishāvarzī-i Manṭaqah-i Kāshān," *Nāmah-i Farhangistān* 11(1376/1997): under *rawzaqah*.
27 Mīrzā ʿAlī Ṣafāʾ al-Salṭanah Nāʾīnī, *Safar-nāmah*, ed. M. Gulbun (Tehran: Ittilaʿat, 1366/1987–8), 77.
28 Jalāl Āl-i Aḥmad, *Tāt-nashīnhā-i Bulūk-i Zahrā*, 4th edn. (Tehran: Amir Kabir, 1356/1977–8), 35–40.
29 Lambton, *Landlord*, 222.
30 Abū Bakr Muḥammad Karajī, *Istikhrāj-i Ābhā-yi Pinhānī*, tans. Ḥusayn Khadīv-i Jam, 2nd edn. (Tehran: Pazhuhisgah va Komisiyun-i Yunisuku, 1373/1984–5), 155.
31 Ibid. 158–159.
32 Lambton, *Landlord*, 220.
33 Lambton, *Landlord*, 217.

8

URBAN–RURAL RELATIONS IN EARLY EIGHTEENTH-CENTURY IRAN

A case study of settlement patterns in the province of Hamadan[1]

YAMAGUCHI Akihiko

Recent urban studies of the Middle East have criticized those approaches that look at cities and villages as completely separate entities. Instead, stressing the interrelations and overlaps between the two, these studies have advocated setting up a wider regional framework comprising cities, villages, and even nomads, to highlight the differences and similarities between urban and rural settlements as well as the characteristics of their relations. Such an approach, these studies say, is more appropriate for understanding the reality of Middle Eastern societies, in which town-dwellers, villagers, and nomads often mingle with each other.[2] Although such a basic stance as this is applicable in urban studies and is widely accepted among scholars, there have been only a few positive works discussing urban–rural relations in Iranian studies from such a point of view, at least for the pre-modern era.[3]

This study examines the demographic and economic situations of towns and villages in the province of Hamadan in the early eighteenth century, to throw light on urban–rural relations in the region. The population of settlements and their geographical distribution are usually major indicators in assessing not only the socio-economic changes of individual towns and villages but also the mutual connections formed among them. In Iranian historical studies, however, mainly due to the scarcity of relevant historical documents, demographic analysis of settlements has rarely been tried. One of the few exceptions is a study by Jean Aubin, which estimated the population of major cities in Iran *c.* A.D. 1500 by thoroughly examining accounts by contemporary European travelers.[4] Despite Aubin's efforts, however, he can only show an approximate evaluation of some primary cities. Thus, we have only a vague picture of the demographic situation of certain principal towns, on which comparatively rich literature is available, while our knowledge of the size of rural settlements is almost nonexistent.

This study will use some unexplored Ottoman documents, the *tahrîr defterleri*, or cadastral records, of western Iran. Now preserved in *Başbakanlık Arşivi* (the Archives of the Prime Ministry) in Istanbul, Turkey, these records are the products of several Ottoman occupations of Iran between the late sixteenth and early eighteenth centuries. Most of them, more than ten registers, belong to the later period, just after the breakdown of the Safavid dynasty. These registers record in detail the names of each settlement or tribal group, its administrative affiliation, and a list of taxpayers and tax evaluations. These data provide rich information on settlement scales and economic activities of the regions,[5] covering almost the whole territory of western Iran, including the Caucasus, Azerbaijan, Kurdistan,[6] Hamadan, Kirmanshah and Luristan.[7] In this chapter, we deal with one of these registers, TT 907, which more or less covers what is now the province of Hamadan.[8]

Below, first we explain the background of the register and its form. Next we point out some characteristics of rural and urban settlements recorded in the register and examine the size distribution of the settlements. Finally, by locating the settlements on a map, we analyze the urban–rural relations of the area from a geographical point of view. Our emphasis will especially be on the role of urban centers in rural development. As we demonstrate below, of the hundreds of inhabited villages recorded in the register, most of them small communities, certain villages were comparable in population to the smaller towns in the province. The question is: for what reasons and in what manner did enormous villages come into being in these particular places? To answer this fundamental question, we look at the geographical disposition of these huge villages vis-à-vis towns. It is hoped that this trial study may contribute to a larger understanding of the diverse and close connections between rural and urban settlements.

The fiscal register used here, however, is no more than a list of taxpayers and tax items, complemented by a few additional annotations. It provides little information about the vivid human and material movements between cities and villages. Under these circumstances, to discuss urban–rural relations in the region as a whole is beyond the scope of this chapter. The principal aim of this study is simply to present a few tentative assumptions as to urban–rural relations in the province of Hamadan at the beginning of the eighteenth century.

Sources

The tax register in question is preserved as TT907 in the Archives of the Prime Ministry in Turkey. The register itself bears no reference to a preparation date or compiling proceedings. But *Mühimme Defterleri*, registers of "important affairs" containing rescripts sent out in the name of the Sultan, include relatively numerous Imperial edicts on the Ottoman conquest of western Iran and Ottoman policies for the regions.[9] Some of them touch on the fiscal surveys conducted for the occupied territories of Iran. Analysis of these ordinances makes it possible to specify the approximate period of the preparation of the register and which officials were in charge.[10]

The first edict that refers to the inspection of Hamadan is dated early Safar 1137 (October 1724).[11] According to it, Ahmed Pasha, Ottoman governor-general (*vâlî*) of Baghdad and commander (*serʿasker*) of Hamadan districts,[12] proposed to the central government the necessity of a fiscal survey (*tahrîr*) for villages and towns in the newly conquered provinces of Kirmanshah, Hamadan and Ardalan. For this purpose he called for the dispatch of a surveyor (*muharrir*) and some scribes (*kâtib*) of the Imperial Registry (*Defter-i hâkânî*). In response to this proposition, the Ottoman government commissioned Mustafa Fehim, then *defterdâr*[13] of Basra, as inspector of the said regions and posted him to Hamadan.[14] According to the edict, he was appointed because at that time he was at Basra, near the above-mentioned three provinces, and also was experienced in fiscal surveys. The edict tells also of the dispatch of three scribes of the Imperial Registry on the spot. The Ottomans usually entrusted the fiscal survey to a surveyor, with scribes supporting him. Clearly a similar formation was organized for the survey in the three provinces.[15]

A month later another edict was issued, dated early Rabiʿ al-Awwal 1137 (November 1724),[16] which indicates that for the immediate completion of the survey, the government appointed another Mustafa Fehim, scribe of the Imperial Registry, also as the surveyor (*muharrir*) for the provinces concerned.[17] The same ordinance says that before its issue, a Mustafa Rumi, scribe of the Imperial Registry and then staying at Van, had been commanded to support Mustafa Fehim (ex-*defterdâr* of Basra) in the inspection, though the former himself apparently was not appointed *muharrir*. Thus at this point at least three officials, including two surveyors, were charged with the inspection of the regions. On the other hand, an edict issued a year later, namely, at mid-Rabiʿ al-Awwal 1138 (November 1725), refers to Mustafa Fehim (ex-*defterdâr* of Basra) as *Hamadan defterdârı* also. It reveals that he was charged with the office of *defterdâr* of Hamadan as well as that of *muharrir* for the three provinces.[18]

According to an order of late Jumada al-Akhira 1138 (February–March 1726), Karahasanzade Ahmed, one of the *kapucubaşları*, was nominated as *mübâşir* of the survey of the said conquered lands and ordered to cooperate with the two Mustafa Fehims.[19] However, eight months later, in early Rabiʿ al-Akhir 1139 (October–November 1726), Mustafa Fehim (scribe of the Imperial Registry) was dismissed from service because of trouble with his colleagues and summoned to the capital.[20] On the other hand, the same edict indicates that Karahasanzade Ahmed was appointed as *muharrir* around the same time.[21]

The exact date of the completion of the register is not known. But there can be little doubt that the survey operation had been finished no later than Muharram 1141 (August 1728). An edict of this date tells that the central government authorized Karahasanzade Ahmed, and two scribe of the Imperial Registry working for him, to make a fair copy of the register at the Imperial capital, since this was not possible on the spot.[22] Thus we see that it took about four years to complete the survey after it was commanded in early Safar 1137 (October 1724).

The use of the Ottoman fiscal registers on Iran as historical sources presents some problems. One is that the registers were prepared during an unusual situation involving all of Iran after the fall of the Safavid dynasty. Afghan and Ottoman invasions from both sides of the country certainly had a negative effect on social and economic conditions in the regions concerned, in particular the demographic circumstances. In fact, some political and military centers such as Tabriz and Hamadan stoutly resisted the Ottoman invaders, which might have caused a sudden decrease in the population of these cities. *Mühimme Defterleri* provides us with some evidence on this point. The above-mentioned edict dated late Jumada al-Akhira 1138 (February–March 1726) says: "most of villages in the country of Iran resembled towns and each village had once 150 households." But, it continues, "the country was plundered and the possessors (*ashâb*) of all of them have gone away." According to the same edict, to remedy the state of things the Ottoman authorities tried to urge people to return to their home villages, and their policy was gradually having results.[23]

Under these circumstances, the data of the register may well reflect a sharp fall in population. As seen below, most inhabited villages recorded in the *tahrîr* have fewer than 30 taxpayers. Certainly 13 villages were inhabited by more than 150 taxpayers each, but these villages are only 2.6 per cent out of 504 inhabited villages. More important, 40 per cent or more of the registered villages may have been empty. Their spatial disposition is irregular and, as Table 8.1 shows, in a few districts (*nâhiye*) located in the north of the province[24] almost all villages

Table 8.1 Inhabited and uninhabited villages in Hamadan province

Nâhiye	*A*	*B*	*C*	*D*
Siminrud	33	25	8	24.2%
Kuhpayah	28	19	9	32.1%
Faravar	17	14	3	17.6%
Mamasharud	13	11	2	15.4%
Aznard	27	22	5	18.5%
Sardrud	55	7	48	87.3%
Hamadan	20	10	10	50.0%
Isfandabad	99	70	29	29.3%
Mihraban	117	40	77	65.8%
Malayir	146	87	59	40.4%
Atara Marj	47	8	39	8.30%
Nihavand	74	45	29	39.2%
Harsin	44	37	7	15.9%
Khazal	23	9	14	60.9%
Tuy	114	100	14	12.3%
Total	857	504	353	41.2%

A: Registered villages; B: Inhabited villages; C: Uninhabited villages; D: Ratio of uninhabited villages out of the total number of registered villages (%)

were abandoned. Even in times of peace, some villages must have been uninhabited. But comparison with the province of Ardalan, where only about 10 per cent of the recorded villages were deserted,[25] suggests that the Afghan and Ottoman invasions probably affected the province of Hamadan far more seriously. In this way, the data provided by TT907 supposedly mirrors the confusion accompanying the collapse of the Safavids and the foreign incursions that followed.

Another problem, closely related to the above, is that the scope of our project is very limited in time. Ottomanists usually use a series of fiscal registers from various periods for a given region. Comparing different registers of the same place, they not only discern the long-term economic development of the region, but also check the reliability of each of these documents. If data from a particular register are significantly different from those of others before or after it, they can hypothesize that the difference might stem from sheer social and economic change in the region, or even from an incomplete register. In any case, they have a chance to guess that something is anomalous about the data of the register. For our registers, however, no similar document covering the same regions is available, and thus at least for the moment we cannot control the reliability of the document in such a way.[26]

We will now turn to the form of the document.

Usually, the Ottoman administrative divisions form a four-folded hierarchy: *eyâlet – livâ* (*sancak*) *– kazâ – nâhiye*. But, in TT907, *nâhiye*s belong directly to the *eyâlet*, without the levels of *livâ* and *kazâ*.[27] To *nâhiye*s are subordinated towns (*kasaba*), villages (*karye*) winter quarters (*kışlak*), cultivated lands (*mezraʿa*[28]), tribal groups (*cemâʿat*[29]), and pastures (*çayır*).[30] Listed with a serial number, each of them constitutes an individual unit of taxation. In general, an individual settlement or tribal group composes such a fiscal unit, but in certain instances, a few settlements are collected into a single unit.[31] If a settlement is deserted or ruined, it is listed with a mention to this effect (*hâlî ʿani'l-reʿâyâ* or *harâb*[32]). Moreover, the names of neighboring settlements and the extent of fields pertaining to the vacant village are sometimes noted. Here we observe the Ottoman administration's intention to include every settlement in the surveyed region, whether inhabited or uninhabited, and accurately represent conditions at that moment in time.

Before turning to a closer description of the form of the document, we will explain briefly the Ottoman method of taxpayer classification, in particular for those living in rural settlements.

In general, the Ottomans classified peasants into five categories according to the extent of their landholding and marital status: *çift*, *nîm-çift*, *bennâk*, *mücerred* and, *caba*. *Çift*, in Persian *juft*, means a plot of land that can be cultivated by a pair of oxen, or the holder of such an extent of land.[33] *Nîm-çift* is a cultivator having a half of *çift*. A married cultivator whose holdings amounted to less than half a *çift* was called *bennâk*; an unmarried one, *müceerred*. A landless cultivator was called *caba*. Another important concept is *hâne*, which

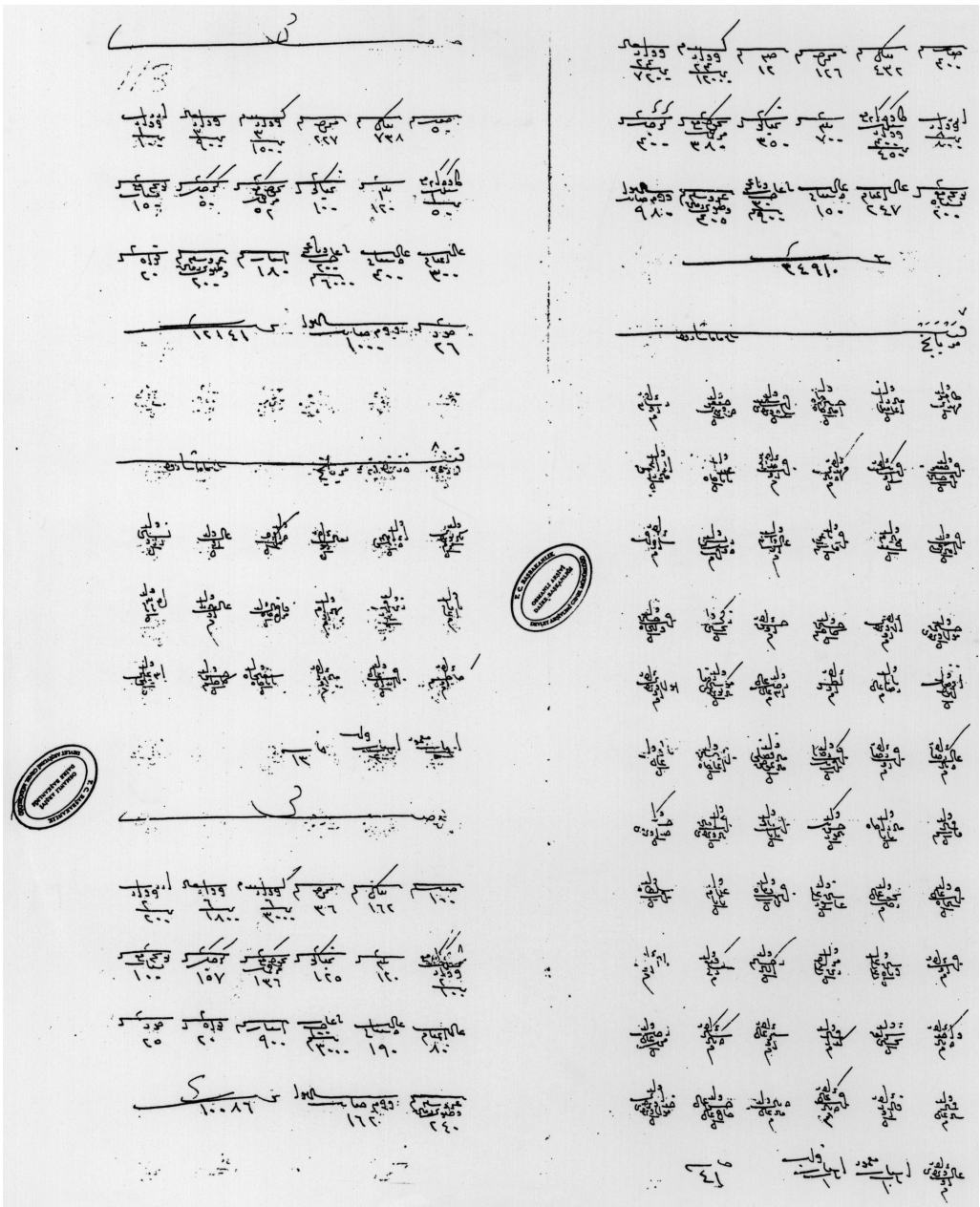


Figure 8.1 TT907, 112–113

can be translated as household. In Ottoman context, a peasant classified as *çift*, *nîm-çift*, or *bennâk* constituted a *hâne*, while neither *mücerred* nor *caba* were considered as having a *hâne*.[34]

In TT907, almost all taxpayers are classified as *bennâk*, *mücerred*, or *caba*, while *çift* and *nîm-çift* are rare.[35] Thus apparently most settlements in the area under study consisted of peasants having less than half a *çift*. More interesting, most of *mücerred*s and *caba*s are a son or brother of a *bennâk*.[36] Accordingly, if *mücerred* means an unmarried adult male, *caba* in our register might represent a married peasant who was not yet independent of his father or brother's household.[37]

Each fiscal unit is presented as follows. First, its category (*kasaba*, *karye*, kışlak, *cemâʿat*, and *çayır*) and name are given, then the name of the *nâhiye* to which it is attached, then a list of taxpayers. On each line, six taxpayers are described from right to left, the name of father or brother with each. For a peasant, an abbreviation representing taxation status (*çift*, *nîm-çift*, *bennâk*, *mücerred*, and *caba*) is shown below the name of the father or brother. For a religious leader such as an imam, the title is put in place of the taxation status. They also appear to be exempt from the hearth tax (*resm-i bennâk*, *resm-i mücerred*, and *resm-i caba*). *Sayyid*s also seem to have had a similar tax exemption, since their taxation status is not referred to.[38] Besides these "religious" figures, some people are recorded but fiscal status is not mentioned, though the reason is unclear. Perhaps this can often be attributed to a scribe's error.

After the list of taxpayers comes that of taxes levied on the settlement or the group. Commonly found in TT907 are, first, hearth taxes.[39] Next, taxes on principal grains such as wheat (*gendüm*), barley (*şaʿîr*), millet (*erzen*), erses and lentils (*gâvdâne maʿa sengek*) are mentioned, both in kind and in cash. The tithes on cotton (*pembe*), tobacco (*tenbâkû*), castor-oil plant (*kerçek*), chick pea, and lentil (*nohûd maʿa mercimek*), and bur clover, and kitchen garden (*yonca ve bûstân*) are recorded only in cash. A tax on stockbreeding, sheep tax (*ʿâdet-i ağnâm*), is enumerated. Last are the farm watch tax (*ʿâdet-i deştbânî*), marriage tax (*resm-i ʿarûsâne*), title deed tax (*resm-i tapu-yı zemîn*), mill tax (*resm-i âsiyâb*), and miscellaneous taxes (*bâd-ı hevâ*). The above-mentioned taxes are imposed on almost all the inhabited villages, while taxes on apiculture, rice-growing, walnut, and fruits are levied only on some villages (see below in the text). At the end of the list, the total is indicated. When the total is small, usually less than 10,000 *akçe*, only the sum is recorded without the reference to individual taxes.[40] In the same way, when a village is uninhabited, only the total value is mentioned.[41]

Taxable resources of non-agricultural economic activities in towns are registered in the form of the list of *mukâtaʿa* and are calculated separately from the main body of the taxation list of the towns (a form almost the same as that of villages).[42]

Natural and geographical framework of the province of Hamadan

A description of the natural and geographical framework of the province of Hamadan will be helpful before we move on to the main task.[43]

The region covered by the register, with the city of Hamadan as its capital, belongs to the arid zone, as do most regions of the Iranian plateau. The climate is dry and annual precipitation is limited. On the other hand, this region includes part of the Zagros Mountains. Alvand Mountain, extending east–west in the south of the city of Hamadan, reaches as high as 3,500m. A number of rivulets flow from the ravines of the Alvand and meet one another in the plain. Those of the north flow towards the Qara-Chay River, which irrigates the Hamadan plain; those of the south bring their water to Gamas-ab, which goes on to Kirmanshah. In the plain, many streams that descend from the mountain fertilize the land. On the other hand, where sufficient water was not available from the river, in the past the *qanat* or subterraneous canals were widely used to irrigate the field.[44] This availability of water was essential in the development of Hamadan.

This region has a long history and has been reckoned among the most economically advanced regions in the Iranian plateau. In particular, Hamadan, ancient Ecbatana, was always the political and economic center of the region and eventually of the larger country. It was the above-mentioned rich agricultural production that guaranteed the region's prosperity throughout its long history. Travelers and geographers visiting Hamadan in different periods noted the fertility of the land surrounded by well-watered fields and gardens.[45]

Yet Hamadan does not owe its prosperity since antiquity solely to its thriving agriculture. More important is the region's location at the crossroads of various caravan routes going from Mesopotamia to oasis cities in the center of the Iranian plateau and further to Khurasan.[46] The evidence for this is that throughout history many travelers and merchants passed through Hamadan. Even though it is difficult to locate exactly the caravan routes passing through the province around the period under examination and to identify the importance of each itinerary, one can at least infer the following trajectories from descriptions by European travelers.[47] The usual route, leaving Aleppo, went to Baghdad through Mosul and, crossing the border, led to Kirmanshah. Then the route branched into several courses. One proceeded to Hamadan by way of Kangavar and Asadabad and from Hamadan spread northward (Qazvin, Sultaniyyah) or westward (Qum, Isfahan). Another, leaving Kangavar, passed by Tuy and headed to Isfahan. Still another route, passing through the southern flank of the province, led to Isfahan by way of Nihavand.[48] Moreover, another course came from the Ottoman territory to Iran. According to Tavernier, a French merchant of the seventeenth century, this route coming from Aleppo entered Iran at Marivan in the province of Ardalan and, passing through Sine (Sanandaj), the capital of the province, reached Hamadan.[49]

These caravan routes vitalized human and material communications on an interregional scale, and this brought much wealth to the province of Hamadan. Evliya Çelebi, an Ottoman traveler of the seventeenth century, visited Hamadan and left a vivid, although perhaps exaggerated, description of the town as a commercial center.

> There are 11 caravansaries [in the city of Hamadan]. Merchants from India, Sind, Anatolia (Rum), Arabia and Persia stayed in any one of them and they had various goods and tissues. . . . The market, composed of 2,000 small shops, is a remarkable one.[50]

The prosperity of the area, however, was many times threatened and interrupted by the political and military activities of outside conquerors, such as the Mongols and the Ottomans. And there is no doubt that these conquests resulted in sudden economic decline or stagnation, even if only temporarily. Nevertheless, the two factors, rich agricultural production and a position as crossroads tying the West and the East, always provided the province of Hamadan with at least potentially great economic capacity.

Villages in the register

TT907 encompasses 857 villages, of which 504 are inhabited and the rest uninhabited (Table 8.1). Here we focus on the inhabited villages.

First, relying on the data of the register, we point out briefly some characteristics of the villages in the province of Hamadan. As is usual in West Asia, the village economy was agriculture and stock farming. According to the tax items described in the register, primary agricultural yields were grains such as wheat, barley, and millet, plus some commercial products like cotton and tobacco. Lentil, castor oil plant, peak, and bur clover were also among the main products. These crops were probably planted in almost all the villages. On the other hand, fruits, rice, walnuts, and bee keeping were only seen in a few districts (Table 8.2). For instance, fruits and rice were produced in the southwest districts of the province,[51] such as Harsin, while walnuts and apiculture were found mainly in the center of the province.[52]

In the province of Hamadan, many villages had gardens and vineyards. In the province of Ardalan, only 10 per cent of the inhabited villages had gardens while in Hamadan about 40 per cent did so (Table 8.3). Even villages with no arable land often had allotments and vineyards.[53] Perhaps the availability of water accounts for the importance of gardens in the province of Hamadan.

Almost every village in the region was engaged in stock farming, but its importance differed from village to village and from district to district (Table 8.4). In particular, the *nâhiye* of Isfandabad stood out with regard to the sheep tax; the provincial average per village was 386 *akçe*, while in Isfandabad the tax was 1,169 *akçe*, three times the provincial average.[54] Even more interesting, the district of

Table 8.2 Villages having specific crops or apiculture as tax items in Hamadan province

Nâhiye	*A*	*B*	*C*
Siminrud	1		
Kuhpayah	6		
Faravar			
Mamasharud	5	4	
Aznard			
Sardrud			
Hamadan	1	1	
Isfandabad			
Mihraban			
Malayir	1		
Atara Marj			
Nihavand	1		6
Harsin			7
Khazal			
Tuy	23	1	4

A: Apiculture; B: Walnuts; C: Rice

Table 8.3 Villages with gardens and vineyards in Hamadan province

Nâhiye	*A*	*B*	*C*	*D (B/A)*	*E (C/B)*
Siminrud	25	18	112,710	72.0%	6,261.7
Kuhpayah	19	17	69,334	89.5%	4,078.5
Faravar	14	13	101,700	92.9%	7,823.1
Mamasharud	11	10	33,300	90.9%	3,330.0
Aznard	22	14	30,900	63.6%	2,207.1
Sardrud	7	1	150	14.3%	150.0
Hamadan	10	8	137,100	80.0%	4,637.5
Isfandabad	70	26	22,610	37.1%	869.6
Mihraban	40	11	3,759	27.5%	341.7
Malayir	87	41	69,218	47.1%	1,688.2
Atara Marj	8	5	3,390	62.5%	678.0
Nihavand	45	12	63,495	26.7%	5,291.3
Harsin	37	14	18,330	37.8%	1,309.3
Khazal	9	0	0	0.0%	0
Tuy	100	30	203,310	30.0%	6,777.0

A: Inhabited villages; B: Villages holding gardens and vineyards; C: Total sum of taxes on gardens and vineyards; D: Ratio of garden-holding villages out of the inhabited villages in each *nâhiye* (%); E: Average amount of garden and vineyard taxes in each *nâhiye*

Table 8.4 Sheep tax per *nâhiye* in Hamadan province

Nâhiye	*A*	*B*	*C*	*D*
Siminrud	25	1,384	14,230	569.2
Kuhpayah	19	983	4,019	211.5
Faravar	14	1,133	7,699	549.9
Mamasharud	11	389	2,617	237.9
Aznard	22	521	3,717	169.0
Sardrud	7	45	260	37.1
Hamadan	10	328	1,726	172.6
Isfandabad	70	1,886	81,884	1,169.8
Mihraban	40	608	10,941	273.5
Malayir	87	2,509	23,884	274.5
Atara Marj	8	116	880	110.0
Nihavand	45	1,007	8,240	183.1
Harsin	37	874	6,510	175.9
Khazal	9	103	820	91.1
Tuy	100	2,782	27,589	275.9
Total	504	14,668	195,016	386.2

A: Inhabited villages; B: Taxpayers; C: Total value of sheep tax (*akçe*); D: Average sheep tax per village (*akçe*)

Husaynabad located west of Isfandabad in the province of Ardalan has also flourishing stock farming area. These abutting districts must have had rich pastures.[55]

Finally, rural settlements in the province of Hamadan were by no means indifferent to manufacturing. Although rarely, some villages did pay the dye-works tax (*boyahâne*). Although a mixture of agriculture and stock farming was prevalent in the region, in certain villages manufacturing was part of the economy, albeit on a small scale (see below).

Let us now consider the size of rural settlements in the region. In order to show the size of villages by using the number of taxpayers,[56] some explanation of the data is needed.

In principle, we reckon the total of peasants classified as *çift*, *nîm-çift*, *bennâk*, *mücerred*, and *caba* in a given settlement is its taxpaying population. Yet, as said earlier, some people are listed without any mention of fiscal status. Here, considering that they were part of the adult male population, we include them in the number of taxpayers. Thus we count the total of all listed people of a settlement as its adult male population.

Moreover, sometimes the number of *bennâk*, *mücerred*, and *caba* listed does not coincide with the number in each of these categories as calculated from the hearth tax levied on each. Assuming that scribes' errors have caused the discrepancies, we will use the former figure.

Figure 8.2 shows the distribution of settlement size in terms of taxpayers. The x-axis shows the number of taxpayers per village. The y-axis shows the

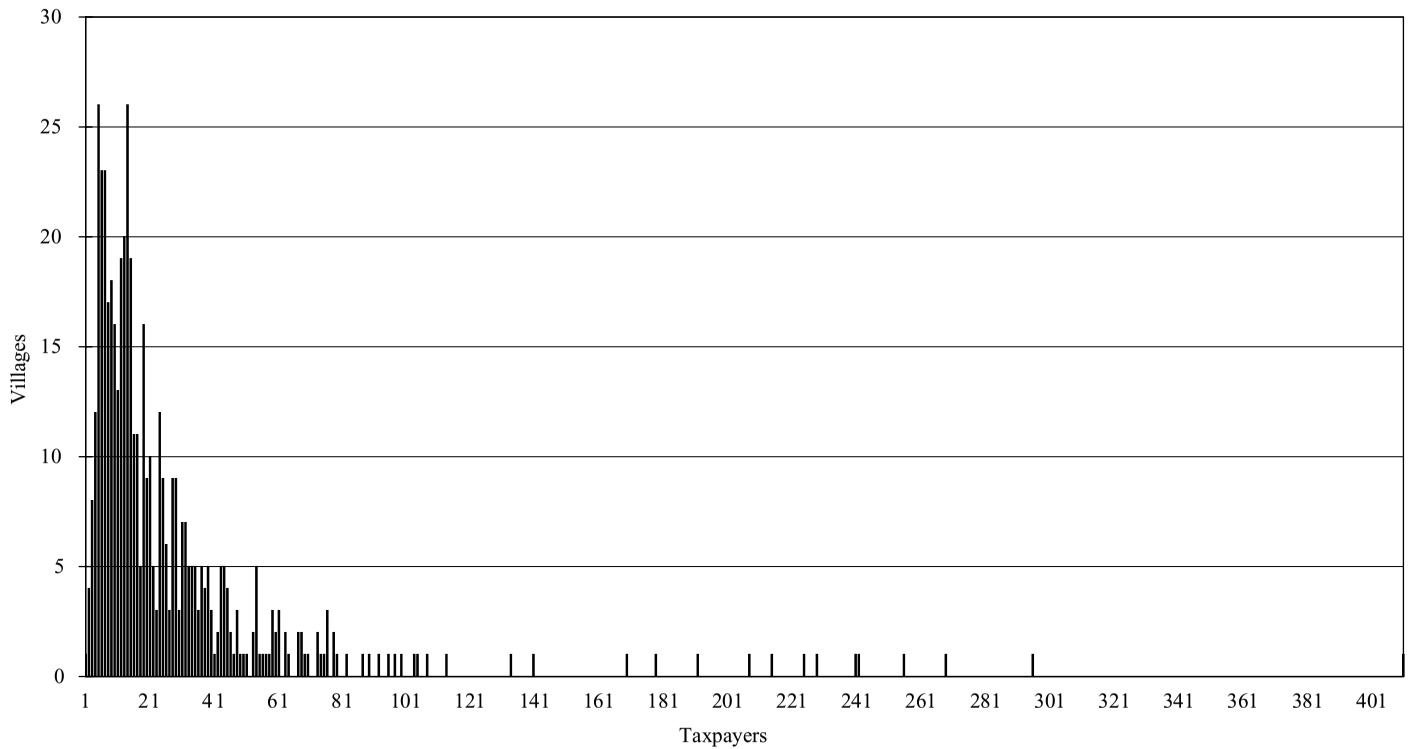


Figure 8.2 Village size distribution in Hamadan province

number of villages corresponding to a particular number of taxpayers per village. The graph tells us that the size of villages in the region varied considerably. The smallest village, which we might not even call a "village," had only a single taxpayer, while the biggest one was inhabited by as many as 400 taxpayers, comparable to some small towns. However, it is certain that most villages (73 per cent) were inhabited by not more than 30 taxable adult males; consequently, in this region villages of such a small size were dominant.

This is not to say that most peasants lived in small settlements. Here let us classify the villages into three groups (large, medium, small) according to their adult male populations.[57] As Table 8.5 shows, 4,837 taxpaying peasants lived in small villages, but they are only one third of the total adult male population in rural settlements (14,673 taxpayers). In other words, the majority of the villagers lived in middle and large villages. The average taxpaying population of a village is 29.1.[58]

Next, we turn our attention to the landholding of peasants in this region. Our first focus is on *resm-i çift*. As seen above, although in this register few peasants are recorded as having a full *çift*, *resm-i çift* is put on almost all the inhabited villages. This is quite curious, since in principle this hearth tax was charged according to the number of full *çift* holders. A close examination of the register reveals an interesting connection between *resm-i çift* and the tax value of primary grains, which gives us a clue to the above puzzle: the tax amounts of wheat, barley, millet, and lentil are respectively in proportion to the value of *resm-i çift*.[59] In fact, there are three forms of proportions, as Table 8.6 shows.

The important point is that these taxes on five kinds of crop yields are put not upon particular villagers but upon the entire village. Therefore, the *resm-i çift* in proportion to these taxes must be considered as levied on the whole land belonging to the village. This means that the *resm-i çift* in our register is not proportioned to the number of the peasants having a full *çift*, but to the gross area of fields pertaining to the settlement concerned.[60]

Table 8.5 Classification on population size of rural settlements in Hamadan province

Size	*Villages*	*Taxpayers*	*Çifts*	*Taxpayers per çift*
Large	26	4,461	674	6.6
Medium	115	5,375	1,619	3.3
Small	363	4,837	2,271.5	2.1
Total	504	14,673	4,564.5	3.2

Table 8.6 Resm-i çift and taxes on primary grains (*akçe*)

Pattern	*Resm-i-çift*	*Wheat*	*Barley*	*Millet*	*Lentils*
1	50	1,500	900	100	50
2	90	1,500	900	100	50
3	180	1,500	900	100	50

What is even more interesting, for the settlements belonging to Pattern 2 and 3, the term *feddân* is frequently written, in a small character, on the margin at the same row as the name of the village concerned, and below it a figure is added. The figure is equal to the quotient of the amount of *resm-i çift* divided by 90 or 180. For the villages corresponding to Pattern 1, a number, sometimes with the term *çift*, is written on the margin in the same way. Needless to say the number corresponds to the quotient of the value of *resm-i çift* divided by 50. Accordingly, these numbers added on the margin represent the size of total arable land held by individual settlements in *çift* or *feddân*.[61]

To sum up, the surveyor measured the agricultural land of individual villages (or towns) by the *feddân* or the *çift* and from the result assessed the tax amounts of main crops.[62] The amount of tax on each crop, in both kind and cash, is not always closely tied to its actual production. Instead, these amounts were automatically decided according to the extent of cultivated land, probably with little consideration as to the real agricultural yields. Consequently, we cannot directly know the real agricultural production of each crop in a given village at the time of the survey. We can only compare the villages by the size of their land. But here another problem arises. As is well known, the unit of *çift* is never a reliable indicator to show the accurate area of land. For example, according to Ottoman *kânûnâme*s (regulations), a *çift* corresponds to from 60 to 150 *dönüm*, depending on the fertility of the land. While *dönüm* was a more or less fixed unit,[63] *çift* was never so. Therefore, the number of *çift*, computed from the amount of *resm-i çift*, does not indicate the exact size of the land. Thus using the unit of *çift* for a comparative study is not as simple as might be expected. But, despite these problems, we would expect that the number of *çift* serves as an indication, even if rather roughly, of the cultivated surface or its productivity, for the data of the register is not likely to be completely alien to the actual situation. In all cases, it is not the exact figure but the order of magnitude that interests us. Below, we try to compare the settlements recorded in the register by the extent of landholding represented by *çift*.[64] As noted above, there are three patterns of the ratios of *resm-i çift* to the tax amount of primary crops. To render our analysis easier, we choose Pattern 1 as standard: that is, we assume as a *çift* the plot of arable land on which 1,500 *akçe* of wheat tax is charged.[65]

Figure 8.3 is the frequency curve showing distribution of landholding size of a village in terms of the number of *çift*s. The arable land possessed by a village varied greatly from village to village, some villages having no agricultural land while others hold as many as 50 *çift*s. In spite of this diversity of the extent of landholding, it is also clear that three to six *çift*s per settlement were most typical.[66] The average size is 9.1 *çift*s.

Next, to show the relationship between manpower and the scale of land in villages, we present a histogram indicating the distribution of per-*çift* taxpayers within a village (Figure 8.4).[67] The x-axis indicates the number of per-*çift* taxpayers in a village. The y-axis shows the number of villages corresponding to a particular number of per-*çift* taxpayers. It reveals that the typical number of per-*çift* taxpayers

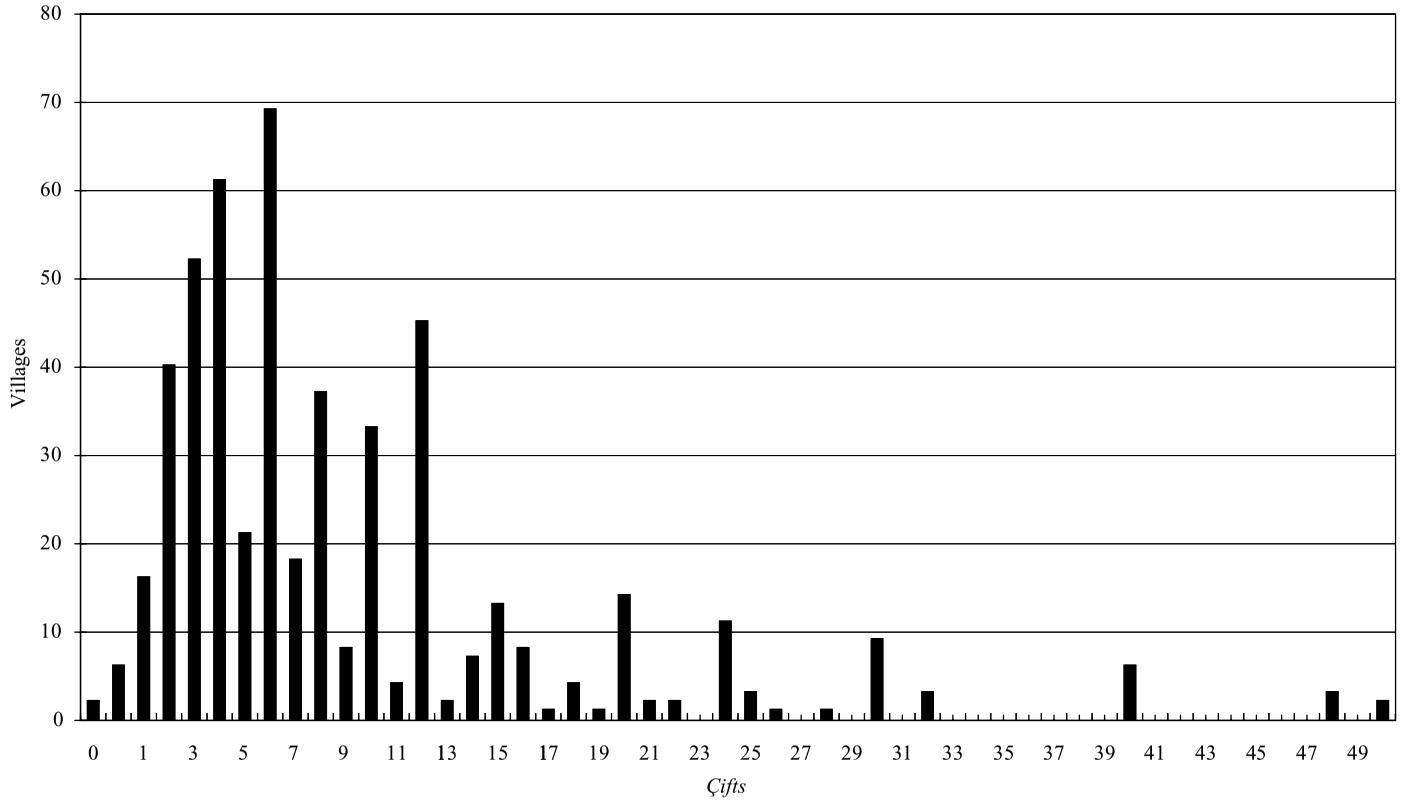


Figure 8.3 Village landholding size distribution in terms of *çift* numbers

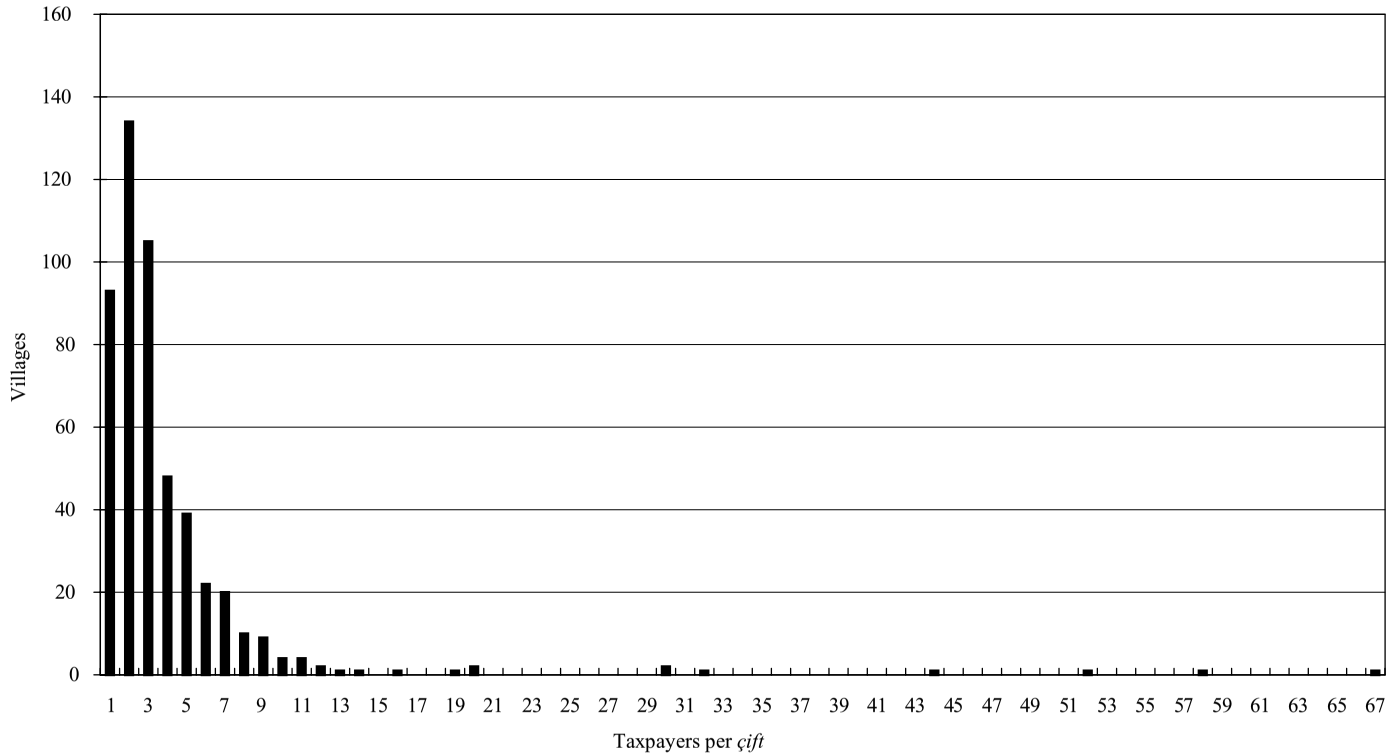


Figure 8.4 Distribution of taxpayers per *çift*

lies between two and three, and villages having more than seven taxpayers per *çift* were rare. Thus, we assume that in this province usually two to three peasants worked a *çift* of land.[68] The average in the province is 3.1 peasants a *çift*.

So far we have seen the average size of villages, the average amount of *çift* per village, and the average number of per-*çift* taxpayers per village in the entire province. Last, let us look at the problem by *nâhiye* (Table 8.7). The table tells us that the trends of the population and landholding are greatly different from *nâhiye* to *nâhiye*. For instance, the average population in northern parts of the province such as Sardrud and Mihraban is less than one-fourth that of the *nâhiye*s around Hamadan, especially of Siminrud, Kuhpayah, Faravar. It shows that in some places large villages developed, while other places had mostly small ones. Why such a difference between the districts? Many factors are involved, and this question will be taken up again in the fifth section.

Towns in the register

Defining cities by using clear criteria is always a challenge. Here we deal with settlements mentioned in the register with the terms *şehir*, *kasaba*, and *nefis*. Hamadan, Tuy, Nihavand, Harsin and Sirkan fall in this category. Of these urban settlements, only Hamadan is called *şehir* in the register; Tuy and Nihavand are *kasaba*, and Harsin and Sirkan, *nefis*.[69] The term *nefis* seems to be commonly used to distinguish a settlement from the *nâhiye* or other administrative unit of

Table 8.7 Taxpayers and *çift*s per *nâhiye* in Hamadan province

Nâhiye	*A*	*B*	*C*	*D*	*E*	*F*
Siminrud	25	1,389	355	55.6	14.2	3.9
Kuhpayah	19	983	194	51.7	10.2	5.1
Faravar	14	1,133	242	80.9	17.3	4.7
Mamasharud	11	389	83	35.4	7.5	4.7
Aznard	22	521	227	23.7	10.3	2.3
Sardrud	7	45	12	6.4	1.7	3.8
Hamadan	10	328	51	32.8	5.1	6.4
Isfandabad	70	1,886	758	26.9	10.8	2.5
Mihraban	40	608	323	15.2	8.1	1.9
Malayir	87	2,509	867.5	28.8	10.0	2.9
Atara Marj	8	116	43	14.5	5.4	2.7
Nihavand	45	1,007	394	22.4	8.8	2.6
Harsin	37	874	169	23.6	4.6	5.2
Khazal	9	103	34	11.4	3.8	3.0
Tuy	100	2,782	836	27.8	83.6	3.3
Total	504	14,673	4,676.5	29.1	9.3	3.1

A: Inhabited villages; B: Taxpayers; C: *Çift*s; D: Average number of taxpayers per village; E: Average number of *çift*s per village; F: Taxpayers per *çift*

the same name.[70] Therefore, strictly speaking, settlements mentioned as *nefis* are not always towns.[71] Despite that, we include Harsin and Sirkan in the category of town because, having a larger population than most villages in the region, they developed manufacturing and commercial sectors as important economic activities.[72] Below are some traits of these urban settlements related to the number of taxpayers and the economic life.

First is the size distribution of towns in terms of number of taxpayers. Table 8.8 shows the number of taxpayers by quarter in each town. In the register, non-Muslim inhabitants are usually separately grouped at the end of the list of taxpayers. Thus, in Table 8.8 they are also listed separately.

The first point to notice is the sharp difference in number of taxpayers between towns. Harsin had only 319 adult males, fewer than the largest village recorded in the region.[73] On the other hand, with about 1,500 taxpayers, Hamadan and Nihavand were clearly large settlements in the region. Yet, further consideration of the adult male population of the former is necessary. For example, the quarters of the city are rather small compared with those of other towns. Maydan-i Sayyid Jalanan of Hamadan, the smallest one, was lived in by only five taxpaying inhabitants, while an anonymous quarter of Nihavand included as many as 808 taxpayers. We should also note that Hamadan was divided into at least 31 quarters, while Nihavand had only two quarters. For these problems, at least two factors need to be taken into account. One is that a series of wars following the fall of the Safavids might have caused a sharp population decrease in some quarters. The other is that a quarter could be sometimes

Table 8.8 Taxpayers in towns of Hamadan province

Town	*Mahalle*	*M*	*C*	*J*	*TOTAL*
Hamadan	Bunah Bazar	31			
	Muy-i Taban	60			
	Miyaniz	58			
	Kazaran-i Chashmah	14			
	Sufiyan	16			
	Pirah Husayn Khani va Pirah Kurak	39			
	Chashmah-yi Hallajan	21			
	Qalah	30			
	Kaslanij?	35			
	Kuzar	16			
	Sayyidan	60			
	Gahbar ve Shurishvari	91			
	Shaliyaqan	38			
	Jullahan	39			
	Baqillah ve Jubanan	16			
	Nazar Beg ve Kuzar	38			
	Hajji	50			
	Pahlavan-i Inayat	17			

Town	*Mahalle*	*M*	*C*	*J*	*TOTAL*
Hamadan	Ahali	33			
(continued)	Imamzadah	18			
	Qashiqah	12			
	Sabzah-var	27			
	Sang-tarashan	11			
	Kulpa	30			
	Kulanj	38			
	Durudabad	62			
	Gunbad	59			
	Sayyid Jalanan	5			
	Hajji Hafiz	42			
	Qintaran ve Qashiq-tarashan	42			
	Kababiyan	30			
	Gebrân der mahalle-i Sufiler		10		
	Gebrân der mahalle-i Salkhkhane		62		
	Gebrân der mahalle-i Kina der mahalle-i Qalah		135		
	Yahûdiyân der mahalle-i Husayn Khani			49	
	Yahûdiyân der mahalle-i Pir Kuri [Kurak]			83	
	Total	1,078	207	132	1,417
Nihavand	–	808			
	Zir	663			
	Yahûdiyân			16	
	Total	1,471	0	16	1,487
Harsin	Pay-i Qalah	217			
	Aziz Big	102			
	Total	319	0	0	319
Tuy	Payin-i darun-i suq	84			
	Masjid-i Zarhan ma‘a mahalle-i Khanqah	162			
	Masjid-i Payin	109			
	Yahûdiyân			32	
	Masjid-i Baghvar	140			
	Masjid-i Dastjirdah?	81			
	Madrasah	80			
	Pay Chanar	129			
	Julahistan	95			
	Mihmankhanah	66			
	Qassabkhanah	63			
	Total	1,009	0	32	1,041
Sirkan	Miyan	213			
	Masjid-i zir	262			
	Bala	241			
	Shahriyar	96			
	Total	812	0	0	812

M: Muslim; C: Christian; J: Jew

divided into several smaller sub-quarters. So if taxpayers were counted by sub-quarters, their size would automatically be smaller.[74] Quite possibly in Hamadan the adult male population was counted by sub-quarter,[75] while in other towns a larger fraction was considered as a unit. In this way, it is not always unusual that the size and number of quarters was greatly different from town to town. However, even so, the above-mentioned Maydan-i Sayyid Jalanan seems too small for a *mahalle*. We cannot deny the possibility that some quarters lost inhabitants because of the Ottoman conquest. In fact, Hazin, a witness of the event, testifies to the fierce resistance of the natives and the heavy destruction caused by the Ottoman attacks.[76]

> Then the Ottomans besieged Hamadan, a metropolis and one of the prosperous cities in [Persian] Iraq. At that time both the governor and the army were absent there and the inhabitants of the city stood up to defend the city. The siege continued three to four months and the besieged people killed a part of the Ottomans with bows and canons, and although the general Ahmed Pasha summoned them to obey, it did not take effect. . . . The Ottomans, (more than 100,000 strong and world famous for conquering fortresses) demolished one side of the castle with the fire of gunpowder, broke into the city, and laid the foundation for slaughter. The people of the city also took up arms they had, and from every side faced them [the Ottomans], . . . everybody was killed in the battles. . . . For three days, the disorder reigned the city, none of them [the people] ever averted his face until all were massacred, except a small number of people who had obtained pardon to go to neighboring regions. . . . In some streets of the city, due to plenty of bodies of the killed, which lay in heaps, there was no room to pass.

Thus it is conceivable that Hamadan had supported a larger population before the fall of the Safavids than at the time of Ottoman survey.

Moreover, other factors confirm this assumption. Usually the Ottoman survey did not count either the *ʿaskerî* class (ruling class) or some other social classes such as slaves. As the provincial capital, Hamadan must have contained numerous *ʿaskerî* inhabitants that would be omitted from the fiscal survey. Evliya Çelebi's description of Hamadan is significant on this point. According to him, the city (*kale*) contained approximately 3,000 knights and 3,000 soldiers.[77] Apart from the armed forces 6,000 strong, he says, there were also slaves, whose number he does not mention. These numbers indicated by him require our prudence, but the city did hold numerous soldiers to defend it. In addition, he states that the city had as many as 7,000 houses. If we assume that a house sheltered, for instance, five persons, the total population would amount to about 35,000. On the other hand, according to Leila Erder, in pre-industrial society the total population was typically about three to four times the number of adult males;[78] therefore, 1,417 adult male inhabitants calculated from the register can be translated into from 4,251 to 5,668 total population. This is about one-eighth of 35,000, the total

population assumed from Evliya Çelebi's report. For the moment we cannot explain such a large gap between the number presented by Evliya Çelebi and the data in the register. However, it is again quite possible that Hamadan had a larger population than the register shows.[79]

As for religious affinity, dwellers in any town of the region were mostly Muslim, but a certain number of Jewish and Christian communities are found in large towns, such as Hamadan, Tuy, and Nihavand. On the other hand, non-Muslim inhabitants are not found in rural settlements, except for a few villages.[80] This is likely because non-Muslims devoted themselves to non-agricultural activities like commerce and manufacturing. From this observation, we could even say that, as far as the region is concerned, the existence of non-Muslims, in particular Jewish people, was generally an indication of urbanism.

Now let us look at economic activities in towns observed from the register's description.

It goes without saying that the development of manufacture and commerce was one of the fundamental elements of urbanism. In the register, as stated above, the tax items on commercial and manufacturing activities are recorded as *mukâtaʿa*, that is, fiscal unit for tax farming. The existence of individual *mukâtaʿa*s and their amounts help us to estimate the significance of non-agricultural economic activities in each town.[81] To facilitate our analysis, we classify the tax items into two categories. The first group is concerned with industries such as dye-works (*boyahâne*), tannery (*debbâğhâne*), slaughterhouse (*salhâne*, *kassâbhâne*), blacksmith (*nalçeband*), soap manufactory (*sâbûnhâne*), and wax-candle workshops (*şemʿhâne*). The second group is composed of tax items concerning commercial activities, including those on dealings of particular goods as well as dues paid for keeping fair trade: customs on cotton (*gümrük-i pembe*), tax on coffee (*tahmîs-i kahve*), tax on tobacco sales (*tenbâkû furûş*), tax on opium sales (*afyon furûş*), (market tax on livestock (*bâc-ı bâzâr ve esb ve ester ve har ve gâv ve ganem*), charge of the keeper of market place (*pâsbânân der sûk*), brokerage dues on horse, cow, ass and others (*dellâliyye-i esb ve gâv ve har ve geyre*), weighing dues (*kapan ve resm-i keyl ve kintâr*), and market supervision tax (*ihtisâb*). Using these two categories of taxes and their amounts, we can characterize the five towns under consideration (Tables 8.9 and 8.10).

Table 8.9 Manufacturers in towns of Hamadan province (*akçe*)

Town	*A*	*B*	*C*	*D*	*E*	*F*	*Total (akçe)*
Hamadan	+	+	+		+	+	444,000
Nihavand	+	+					105,000
Harsin	+						20,400
Tuy	+	+	+	+			392,000
Sirkan	+						46,200

A: Dye-works (*boyahâne*); B: Tannery (*debbâğhâne*); C: Slaughterhouse (*salhâne*, *kassâbhâne*); D: Blacksmith (*nalçeband*); E: Soap manufacture (*sâbûnhâne*); F: Wax candle workshops (*şemʿhâne*)

Table 8.10 Commercial activities in towns of Hamadan province

Town	*A*	*B*	*C*	*D*	*D,E*	*E*	*F*	*G*	*H*	*I,K*	*I*	*J*	*TOTAL*
Hamadan		2,400				15,000	14,400	6,000					37,800
Nihavand			60,000		5,000						10,500	60,000	135,500
Harsin													0
Tuy	93,000			4,000		5,000			93,000	6,000			201,000
Sirkan						4,500							4,500

A: Taxes on cotton (*gümrük-i pembe*); B: Tax on coffee (*tahmîs-i kahve*); C: Tax on tobacco sales (*tenbâkû furûş*); D: Tax on opium sales (*afyon furûş*); E: Market tax on livestock (*bâc-ı bâzâr ve esb ve ester ve har ve gâv ve ganem*); F: Market-place keeper's fee (*pâsbânân der sûk*); G: Brokerage dues on horses, cattle, asses and the other livestock (*dellâliyye-i esb ve gâv ve har ve geyre*); H: Weighing dues (*kapan ve resm-i keyl ve kintâr*); I: Market supervision tax (*ihtisâb*); J: Toll (*râhdâr*); K: Dues originally intended to defray the expenses on summoning defendants to courts (*ihzâriyye*)

Table 8.11 Agricultural production in towns of Hamadan province

Town	*A*	*B*	*C*	*D*	*E*	*F*	*G*	*H*	*I*	*J*	*K*	*L*	*M*	*N*
Hamadan	1,417	147	9.6		2,000	7,330	3,500	4,000			1,600	12,376	57,060	8,700
Nihavand	1,487	138	10.8	1,780	1,870	2,000	820	640			4,000		60,000	1,260
Harsin	319	60	5.3	720	740	200	288	230			400		12,330	1,030
Tuy	1,041	63	16.5	1,700	1,600	2,000	388	800		200	5,000		11,580	540
Sirkan	812	1	812.0	220	320	200	88	400	500	1,000	3,000		151,500	3,960

A: Taxpayers; B: *Çifts*; C: Taxpayers per *çift*; D: Tithe on cotton (*öşr-i pembe*); E: Tithe on tobacco (*öşr-i tenbâkû*); F: Tithe on caster-oil plant (*öşr-i kerçek*); G: Tithe on chickpeas and lentils (*öşr-i nohûd ve mercimek*); H: Tithe on clover with kitchen-garden (*öşr-i yonca ma'a bostân*); I: Tithe on rice (*öşr-i çeltük*); J: Tithe on bee keeping (*öşr-i kovân*); K: Sheep tax (*'âdet-i ağnâm*); L: Tax on livestock pasturing on grassland around the gates of the city (*resm-i mevâşî-i merâ'î-i bâbhâ*); M: Tax on gardens and vineyards (*resm-i bâğât ve bâğçehâ*); N: Tax on watermills (*resm-i âsiyâb*)

Three towns of large size, Hamadan, Tuy and Nihavand, with more than 1,000 taxpayers each, have both categories among their tax items, and the amounts are considerable. On the contrary, *mukâtaʿa* revenues from Harsin and Sirkan, small and medium-level towns respectively, were rather limited. The latter had both of the two categories of taxes, but on a small scale, while the former had only the tax for the dye-workshop. This is not to deny that Harsin probably had bazaars or shops; the commercial sector was clearly not important enough to be considered as primary taxed items to be farmed out. This may be explained by geography: none of the main routes connecting Baghdad and the Iranian plateau passed through Harsin. Probably that is why the town did not play an important role as an interregional commercial center and consequently did not develop to a larger settlement. As for Sirkan, despite its nearness to Tuy, where various manufacturing workshops developed, its non-agricultural activities were relatively dull. Moreover the caravan route passing by Tuy seems to have avoided Sirkan, located at the foot of Mount Alvand. Although the register records the existence of 78 shops (*dükkân*) in the town, and a certain scale of transactions must have occurred, the revenues from commercial activities were rather small. Perhaps it remained a regional market for surrounding villages and/or a hinterland providing Tuy with foodstuffs. And these would be the main reasons why its demographic development was limited, compared with the large towns. Thus presumably the advanced crafts and interregional trades were important factors for urban development.

However, towns were not exclusively non-agricultural settlements. They had many fields and gardens to cultivate, both within and nearby. Hamadan is an example (Table 8.11).

According to the register, numerous large arable lands and gardens were inside and outside the walls of the city. *Resm-i çift* and wheat tax levied on Hamadan was 7,350 *akçe* and 220,500 *akçe* respectively, which corresponds to 147 *çift*s. Even the largest village in landholding, Giyan (207 taxpayers) in the *nâhiye* of Nihavand, had just fifty *çift*s.

The previous chapter suggested that two or three cultivators working on a *çift* of land was typical. Applying this standard to Hamadan, we could assume that about 300–500 cultivators worked in 147 *çift*s. But curiously, in the register, none of the taxpaying inhabitants of the city are categorized as peasants. Certainly hearth tax (*resm-i bennâk* and *resm-i mücerred*) is charged, but with the notice "from outside of the city." In fact, three villages are recorded with the city,[82] and their taxation is included in the tax list of the city. The above-mentioned *bennâk* and *mücerred* must be peasants from these villages: they had 40 *bennâk*s and 8 *mücerred*s altogether, and these figures coincide with the amount of hearth tax charged on the city. But this manpower is obviously not sufficient to till 147 *çift*s of land. Accordingly, some city dwellers must have engaged in agriculture, or outside agricultural laborers might have come to work in the fields of the city. If we assume that from 300 to 500 taxpayers are necessary for the cultivation, we can say that from 250 to 450 town dwellers, approximately one-sixth to one-third of the total taxpaying population, were

occupied with agriculture. And the number increases if we take into account gardens and vineyards, which are commonly more labor intensive.[83]

These findings apply more or less to other towns, with the exception of Sirkan, which had extremely limited agricultural land. In Harsin, almost every taxpayer was classified as a peasant, and 319 peasants (197 *bennâk*s, 121 *mücerred*s, and one *caba*) operated forty *çift*s. In the same way, in Tuy, 1041 taxpayers worked on thirty-one *çift*s; and in Nihavand 1469 taxpayers, on 46 *çift*s. In this way, in towns other than Hamadan, almost all inhabitants are listed with the mention of a fiscal status such as *bennâk*, *mücerred*, and *caba*. It is unlikely they were all peasants, however, considering that they are too numerous for their fields. In fact, the number of peasants per *çift* is 8.0 in Harsin, 33.6 in Tuy and 31.9 in Nihavand. As, according to our assumption that generally two to three peasants worked on a *çift*, these results are extremely high. To put it another way, compared with the population, the fields of the towns were quite poor. On the other hand, if we assume that two to three peasants are necessary for a *çift*, in Harsin 120 peasants (more than 30 per cent of the total taxpayers) worked on land, in Tuy ninety-three (10 per cent), and in Nihavand 138 (10 per cent). Although the reason why all inhabitants of these three towns are registered as cultivators is not clear, one can safely say that at least 10 to 30 per cent of the total listed taxpaying population cultivated the land.

As for Sirkan (812 taxpayers), only one *çift* of land is registered, while the tax on gardens and vineyards reaches as much as 151,500 *akçe*, which is three times as much as that of Hamadan. Considering that the adult male population of Hamadan is about twice that of Sirkan, gardens in the latter prove to be conspicuously large.[84] In short, arable land for crops in the town was limited. Instead, the town was rather rich in gardens. We do not know how many peasants were needed to manage so many gardens, but clearly a considerable part of the town population tended them.

All these observations confirm again that towns had much larger fields and gardens inside and around them than did the villages. Consequently the agricultural sector played an important role in the townspeople's economic life, and city dwellers often ploughed fields and took care of gardens.[85] In fact we have assumed that a substantial part (usually at least 10 per cent to 30 per cent) of the population were completely or partially engaged in agriculture.[86]

Villages and towns

This section deals with the relations of urban and rural settlements, in particular their spatial distribution. The principal question is why a certain number of the villages became remarkably large, with populations of more than eighty adult males, whereas most of the villages remained small, with at most thirty taxpaying inhabitants.

Mapping of the settlements recorded in the register is helpful for consideration of the problem. But, on modern maps, out of 503 inhabited

villages listed in the register only 366 could be identified, about 70 per cent of the total.[87] As for the uninhabited villages, only 166 out of 354 were verified. We put only the thus identified settlements on our map (see Map 8.1). Therefore, the map does not completely show the data of the register. But we think this serves sufficiently our aim, in that our focus is on the relations between larger towns and villages, most of which were easily identified on modern maps.[88]

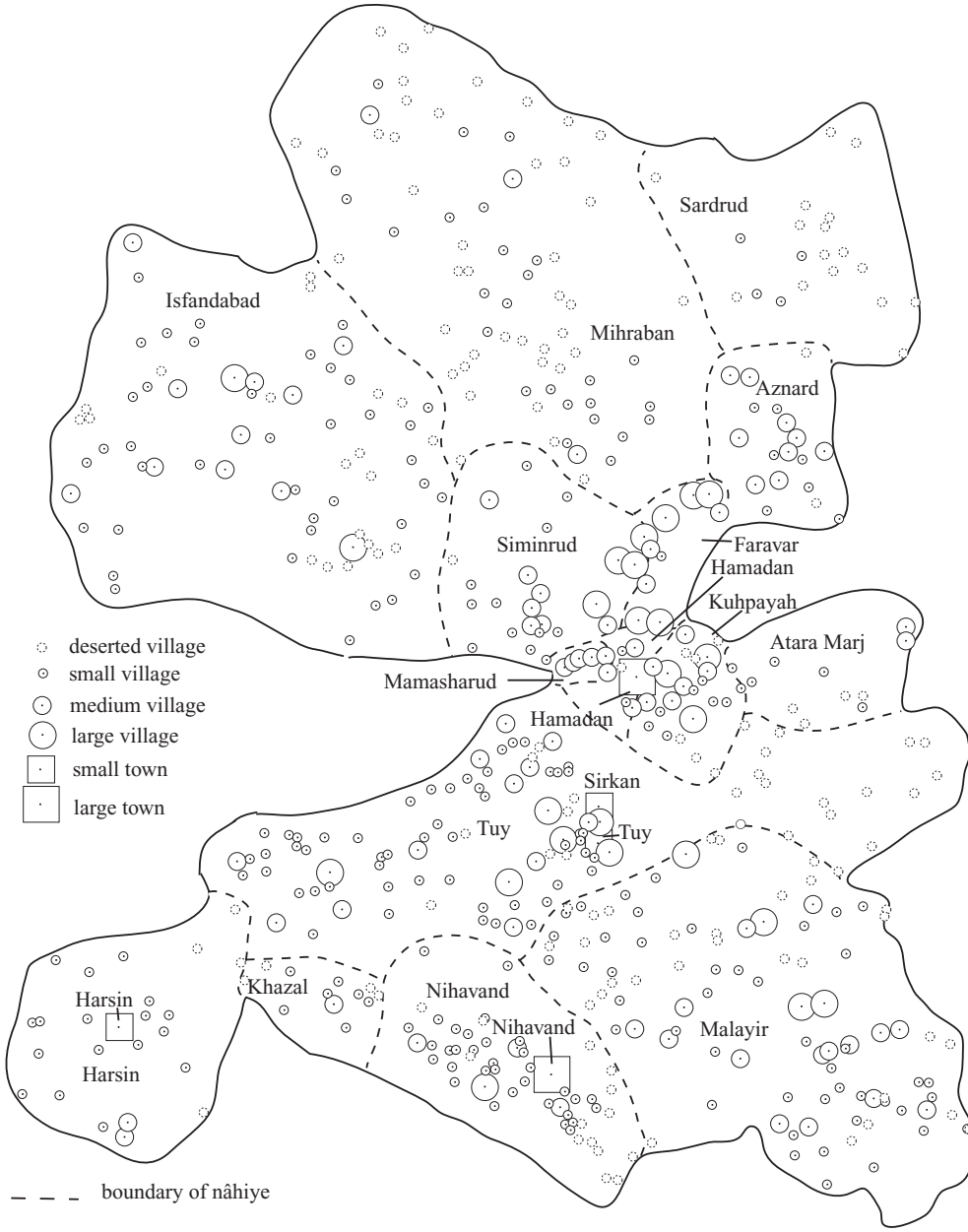
A glance at the map shows an uneven distribution of villages. Regardless of their size, generally many villages converged in the vicinity of large towns such as Hamadan, Nihavand, and Tuy. There were fewer villages further away from towns. Moreover, when we look at rural settlements of more than thirty taxpayers, we easily see that most of them are near the bigger towns.[89] The clarity of the pattern becomes more remarkable when we focus on villages of larger size, say, having more than eighty adult males. Included in this category are twenty-six villages (among which we identified twenty-five villages). Of these, Shivirin (268 taxpayers), Jurqan (295 taxpayers), and Subkhabad (113 taxpayers) encircled the city of Hamadan; Ardman (241 taxpayers), Sarabi (178 taxpayers), Qurzan (228 taxpayers), Pilangar (103 taxpayers), and Farz Farruz (133 taxpayers) encircled Tuy. In contrast, near Nihavand most villages were small, with only Giyan (207 taxpayers) supporting an exceptionally large population (see Map 8.2).[90]

Not all of the large villages abutted the towns. Some were more distant, but significantly ranged along the main routes. Laljin (240 taxpayers), Sulaymana-bad (214 taxpayers), Dastjird (140 taxpayers), and Muhajiran-i Dun (169 taxpayers) are lined by what seems to have been the main road going from Hamadan to Qazvin. In the same way, Kangavar was situated on the road from Kirmanshah to Hamadan, or Tuy, or Nihavand. Nanij (191 taxpayers) and Chubin (actual Malayir,[91] 410 taxpayers), in their turn, lie along on the road from Tuy to Arak, and Sarishabad (255 taxpayers) along the route between Hamadan and Sine (Sanandaj), capital of the province of Ardalan.[92]

Thus, large villages developed either around big towns or along the main routes, and none of them are to be seen in other parts of the province. Under these circumstances, the geographical and economic particulars of the big villages are worth a close investigation.

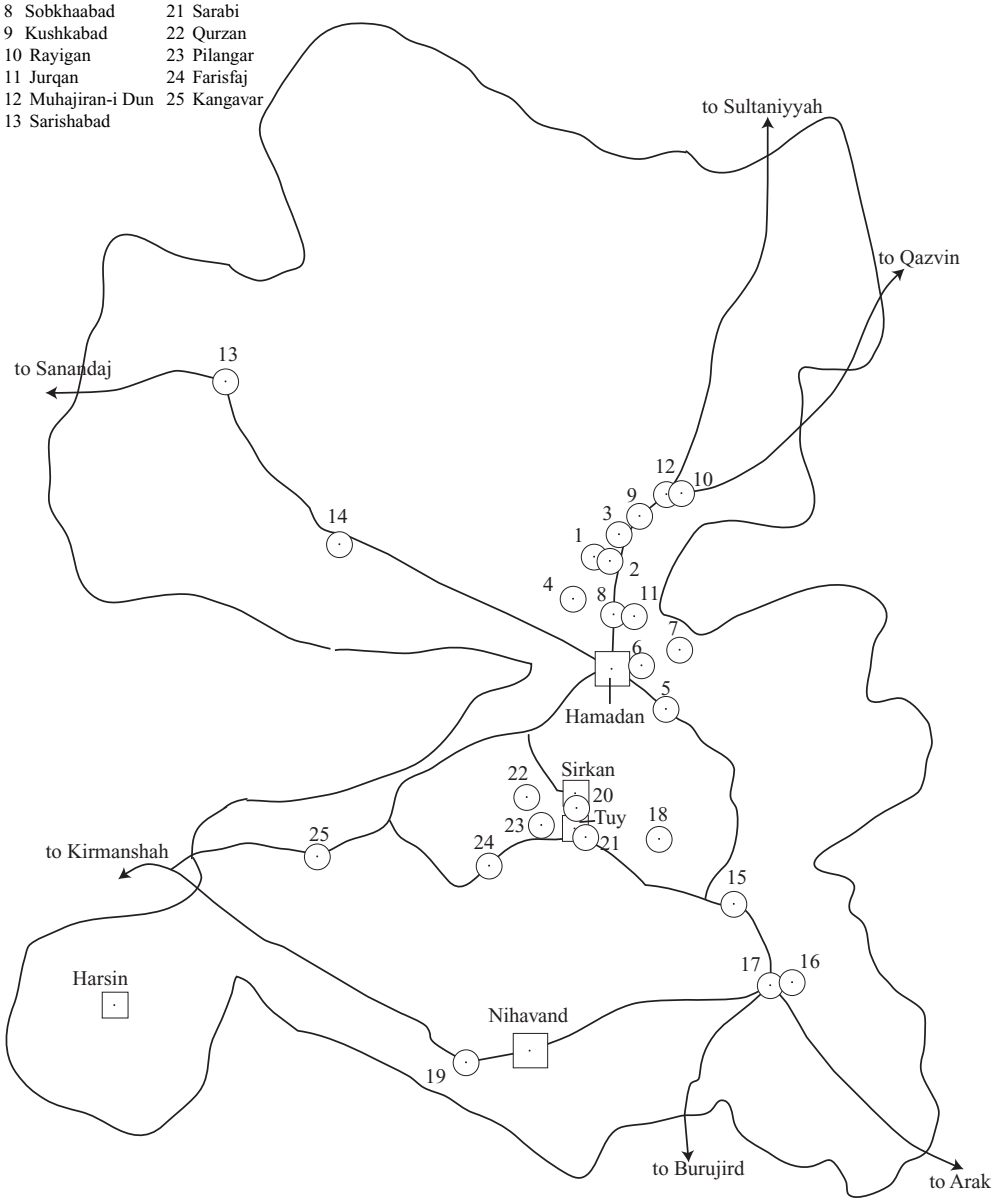
Before turning to this question, we must draw attention to the environmental factor, in particular the problem of water supply. Water has of course always been of the greatest importance for agriculture in dry climates. In this respect, clearly the large villages in the area could secure an ample supply of water, since, according to the register, they had much more arable land than the other, smaller villages. For instance, Damaq (103 taxpayers) boasted as much as fifty *çift* of land. It is not unusual that large rural settlements developed in areas abundant in water, such as the vicinity of Hamadan.

But this factor is not enough to explain why large rural settlements developed in particular places, namely, around big towns and along the main routes.



Map 8.1 Rural and urban settlements in Hamadan province

1 Laljin
2 Sulaymanabad
3 Dastjird
4 Bahar
5 Yalfan
6 Shivirin
7 Surkhabad
8 Sobkhaabad
9 Kushkabad
10 Rayigan
11 Jurqan
12 Muhajiran-i Dun
13 Sarishabad
14 Shihab al-Din
15 Nanaj
16 Aznav
17 Chubin
18 Damaq
19 Giyan
20 Ardman
21 Sarabi
22 Qurzan
23 Pilangar
24 Farisfaj
25 Kangavar



Map 8.2 Large villages, towns and assumed main trade routes

Here we should note the relationship between taxable subjects and the extent of arable land in these villages. Certainly, the large villages had a great deal of arable land, as compared with medium-level and small ones. However, comparison of the number of peasants per *çift* in large villages with that of other smaller villages reveals another aspect of the matter. The preceding section of this chapter noted that in most of villages recorded in the register, two to three peasants worked on a *çift* of land. But a more minute examination suggests that the result is different depending on the size of settlement. On the average, 2.1 peasants worked a *çift* in small villages, 3.3 peasants in medium-level ones, and 6.6 peasants in large ones. This indicates that the larger the villages become, the more peasants worked on a *çift* of land. In other words, in larger villages, arable land was in somewhat short supply in proportion to the population. For example, Pilangar in *nâhiye* of Tuy supported 103 taxpayers with only two *çift*s.[93]

How could these villages of large size survive on a smaller plot of land for their population? Unfortunately we lack definite information on this problem. One likely reason is that in these settlements non-agricultural sectors, as well as husbandry, played a role.[94] Concerning craft activities, the register informs us that 3,500 *akçe* was charged on the dye-works in Kurzan, 3,600 *akçe* on the bakery in Laljin,[95] 60,000 *akçe* on the dye-works in Chubin, 2,400 *akçe* on the dye-works in Giyan, 3,000 *akçe* on the dye-works in Kangavar. It is noteworthy that these villages had more than 200 taxpayers, except for Kangavar, while no taxes on manufacture are seen in villages of small and medium size. For other large villages, no tax on craft activities was found. But, given their scanty cultivated land for the taxpaying population, they surely had some non-agricultural economic activities. Perhaps in these villages, each craft was practiced on too small a scale to be registered.

No mention of commercial activities in villages appears in TT907.[96] What we know is that some large villages ranged along the main routes would have functioned as stations for caravans passing there. Kangavar is a case in point. Almost all the main caravan routes passing through the province of Hamadan crossed this settlement since the earlier times; it was an important stage. Some travelers attest this. For example, Thévenot, a French merchant who passed there in the latter part of the seventeenth century, remarks:

> we came to a big Town, called Kenghever, where we lodged in a Kervanserai. This is a large Town, well built and populous; a Rivulet runs by it, which they call the Water of Kenghever. About it are a great many gardens, full of Fruit-trees of all sorts, . . .[97]

It is noteworthy that he calls Kangavar "a big Town" and points to the existence of a caravansary. Visiting the settlement around the same era, Evliya Çelebi for his part relates that it had 1,000 houses, a Friday mosque, a caravansary, a public bath and gardens.[98] These accounts of the two travelers

leave us the impression that Kangavar was a rather large settlement at least during the latter part of the seventeenth century. On the other hand, two centuries later, Lycklama y Nijeholt also mentions a caravansary in Kangavar, although according to him it was in extremely bad condition. He points out a mosque and a bazaar, which, the latter, was rather spacious and full of products of the surrounding country. From these observations, it is quite possible that at the time under examination Kangavar had still a caravansary and a bazaar, thereby playing roles of a regional market for neighboring villagers as well as of an important relay for caravans.[99]

As for other big villages along the caravan routes, information is rather limited and of later periods. James Morier, going from Hamadan to Tehran, stayed at Muhajiran-i Dun as the first stage from Hamadan.[100] A little later, Comte de Sercey passed by Dawlatabad (actual Malayir), traveling from Isfahan to Baghdad.[101] Again, Bird refers to Nanij in Malayir as the fourth station from Kangavar.[102] In addition, Ker Porter, Buckingham, and Layard stopped at Yalfan, although it is unclear whether they stayed there.[103]

This fragmentary knowledge from later travelers may not sufficiently explain the development of large villages along the caravan routes at the period under examination.[104] In fact it is quite possible that caravan routes and stations changed their importance through the course of time. A station that was important at a particular period might not be so in another era.[105] Even so, certainly at least some of the large villages listed in the register functioned as important posts for travelers and merchants. And we assume that such passing and staying of merchant groups stimulated commercial activities in the rural settlements, thereby causing them to develop into larger settlements.

So far, we have seen that not all the villages were engaged exclusively in agriculture and stockbreeding, and that in some large villages non-agricultural enterprises played a certain role, which probably guaranteed their development in size. As a matter of fact, such a development of non-agricultural sectors was at least partially conditioned by the fact that the settlements were located in the vicinity of large towns or integrated into the urban network connected by caravan routes. It is thus noteworthy that Harsin, a small city situated away from the main trade route, had no big villages around it.

We note, in passing, a few large villages that were divided into several quarters (*mahalle*), as was the case with towns. Dastjird (140 taxpayers) was separated into three quarters, Jala (fifty-seven taxpayers), Kul (forty-eight taxpayers), and Chay (thirty-six taxpayers). By the same token, Sarabi (178 taxpayers) had also three parts: Payin (fifty taxpayers), Mazaristan (sixty-seven taxpayers), and Miyanah (sixty-one taxpayers). For the other large villages, *mahalle* is not mentioned. Anyway, such a division into quarters is never seen in villages of medium and small size, and we may conclude that this is also one of the pre-urban features of large villages.

Conclusion

To clarify some aspects of urban–rural relations in pre-modern Iran, in this study we have focused on the spatial distribution of urban and rural settlements in the province of Hamadan at the beginning of the eighteenth century. The main question is why certain rural settlements became larger while most villages remained relatively small.

To answer this question, we have shown that the large rural settlements emerged generally either around the considerable urban settlements or along the main caravan routes. In other words, no large villages were found far away from towns or trading routes. Then what factors drove these settlements to exceptional development? To answer this question, we have analyzed the number of peasants per *çift* in these villages and compared it with that of other small and medium-sized villages. We have suggested that non-agricultural activities such as manufacture and commerce played a role in the population growth of the large villages. We have assumed that the growth of such non-agricultural sectors was probably due either to their proximity to urban settlements or their connection with the urban transportation network. Here we could see a part of the close relationship between urban and rural settlements, even though the exact nature of these contacts is not clear.

Yet not all villages adjacent to urban settlements or by caravan routes grew larger. Even in the proximity of urban settlements and along the main routes, most of villages remained small or medium-size. In fact, Hamadan had several large villages around it, while only one large village was near Nihavand.[106] Moreover, probably not all the large villages in the province of Hamadan had commercial and manufacturing sectors. Some of them must have devoted themselves to cultivation and stockbreeding, thereby providing neighboring urban settlements with foodstuffs. For example, the village of Shihab al-Din in the *nâhiye* of Isfandabad had thirty *çift*s for ninety-five adult males and the number of per-*çift* taxpayers was 3.1, close to the provincial average. Thus the factors we enumerated do not completely account for why certain villages became larger and others remained small.

After all, we have just revealed as a sketch some aspects of urban–rural relations in a rather limited area and at a given point of time. Numerous questions remain to be asked. And the provisional conclusions presented here should be checked from a broader perspective both in space and in time. It is especially desirable to elucidate more vivid human and material connections between urban and rural settlements. In this sense, this study, which, I hope, shed some light on a part of urban–rural relations, is just a starting point to further thorough investigation on this topic.

Notes

1 This is a revised version of a paper read at the Meeting of Persian Archives Studies, held on October 21, 2000 at the Haneda Memorial Hall, Kyoto. I wish to thank the participants for their useful comments on my paper. The present chapter uses both transliteration methods for Ottoman and that for Persian, depending on the language of the document cited.

2 Toru Miura, "Conclusion – Reinterpreting Urban Studies; Towards a New Perspective," in *Islamic Urban Studies, Historical Review and Perspectives* ed. Masashi Haneda and Toru Miura (London and New York: Kegan Paul International, 1994), 329–330.

3 There are some exceptions. Tsutomu Sakamoto analyzes the social and economic structures of the city of Isfahan during the nineteenth century in terms of relations with the surrounding villages and nomads. Tsutomu Sakamoto, "The Urban Structure of Isfahan in the Ninteenth Century and *Meydān* (in Japanese)," *Shigaku* 50 (1980): 367–387, 51/1–2(1981): 145–158, 51/3(1981): 43–79. Kosuke Shimizu sketches succinctly the close relations between the city of Nishapur and surrounding villages during the middle ages. Kosuke Shimizu, "The Image of Cities in the History of Iran: The Case of Nīshāpūr in the Tenth to Eleventh Centuries (in Japanese)," *Shicho*, new series, 28 (1990): 26–39. Masashi Haneda discusses the role of tribal nomads in the building and development of cities. Masashi Haneda, "Maydān et Bāg: Réflexion à propos de l'urbanisme du Šāh ʿAbbās." In *Actes du Colloque franco-japonais sur les documents et archives provenant de l'Asie Centrale*, (Kyoto, 1990); idem. "The Pastoral City and Mausoleum City: Nomadic Regime and City Building in the Iran-Islamic Land (in Japanese)," *Toyoshi Kenkyu* 49/1(1990): 179–197. For an overview of urban studies on Iran, see Masashi Haneda, "Iran," in Haneda and Miura ed. *Islamic Urban Studies*, 235–279.

4 Jean Aubin, "Chiffres de population urbaine en Iran occidental autour de 1500," *Moyen-Orient et Océan Indien* 3(1986): 37–54. Floor also presents the demographic calculations of some urban centers in the Safavid era. Willem Floor, *The Economy of Safavid Persia* (Wiesbaden: Reichet, 2000), 3–8. For the Qajar period, see Gad G. Gilbar, "Demographic Developments in Late Qajar Persia, 1870–1906," *Asian and African Studies* 11/2(1976): 125–156; Tsutomu Sakamoto, "A Census of Nineteenth-Century Tehran (in Japanese)," *Oriento* 27/1(1984): 92–108.

5 On the use of *tahrîr* registers as historical material, see, for example, Ömer Lûtfi Barkan, "Essai sur les données statistiques des registres de recensement aux XV^{e} et XVI^{e} siècles," *Journal of the Economic and Social History of the Orient* 1/1: 9–36; idem. "Research on the Ottoman Fiscal Surveys," in *Studies in the Economic History of the Middle East*, ed. Michael A. Cook (London: Oxford University Press, 1970), 161–171; idem. c.v. "Daftar-i Khāḳānī," *Encyclopaedia of Islam,* new edn.

6 Concerning the province of Ardalan (Kurdistan), we have already examined the register covering the region (TT1066). Akihiko Yamaguchi, "Early Eighteenth Century Iranian Local Societies as Seen from Ottoman Tahrir Registers (1): Peasants and Nomads in Ardalan Province (in Japanese)," *Tobunken-kiyo*, 140(2000): 211–267.

7 It is Bernard Lewis who first pointed to the value of these Ottoman archives for the economic and administrative history of Iran. Bernard Lewis, "Registers on Iran and Âdharbâyjân in the Ottoman *Defter-i Khâqânî*," in *Mélanges d'orientalisme offerts à Henri Massé*, (Tehran: Imprimerie de l'Université, 1963), 1–5. Following Bernard Lewis, Iranists also have stressed the importance of these registers. But no serious work has been carried out on them as yet, except the doctoral thesis of Fariba Zarinebaf-shahr, which uses a part of the register on the province of Tabriz for a population estimate of its capital. Fariba Zarinebaf-shahr, *Tabriz under Ottoman Rule (1725–1731)*, (Ph.D. Dissertation, University of Chicago, 1991).

8 In fact, the survey of *Eyâlet-i Hamadan* was edited in two separate registers: TT906 and TT907. While the latter has the central parts of the region such as Hamadan, Tuy, Nihavand and Malayir, the former has the peripheral parts like Asadabad, Zanjan and Burujird.

9 For the Ottoman conquest of Hamadan City, see Kaçükçelebizâde, *Târîh-i İsmâʿîl ʿÂsım Efendi* (İstanbul: Matbaʿa-ı ʿÂmire, 1282), 179–189, 189–200. See also Stephen Hemsley Longrigg, *Four Centuries of Modern Iraq* (Oxford: The Clarendon Press, 1925), 130–132; Lawrence Lockhart, *The Fall of the Safavid Dynasty and the Afghan Occupation of Persia* (Cambridge: Cambridge University Press, 1958), 267–273; İsmail Hakkı Uzunçarşılı, *Osmanlı Tarihi*, 3rd edn. (Ankara: Türk Tarih Kurumu Basımevi, 1988), 4/1:180–182.

10 These registers are preserved in *Başbakanlık Arşivi*. On their characteristics as historical sources, see, for example, *Başbakanlık Osmanlı Arşivi Rehberi*, ed. T.C. Başbakanlık Devlet Arşivleri Genel Müdürlüğü, Osmanlı Arşivi Başkanlığı, (İstanbul: Başbakanlık Devlet Arşivleri Genel Müdürlüğü, 2000), 7–19.

11 *Mühimme* 132: 117. In *Mühimme defterleri* of this era, each edict is dated with month and year. The month has three parts: *evâ'il* (early), *evâsıt* (middle) and *evâhir* (late).

12 His father, Eyyubi Hasan Pasha, was also *vâlî* of the province of Baghdad and commander of the Ottoman expedition to Kirmanshah districts. When he died at Kirmanshah, his son was nominated to the post. Longrigg, *Four Centuries*, 130–131; Lockhart, *Fall*, 267–268; Uzunçarşılı, *Osmanlı Tarihi*, 4/1: 180–181. See also Fahmeddin Başar, *Osmanlı Eyâlet Tevcihâtı (1717–1730*), (Ankara: Türk Tarih Kurumu Basımevi, 1997); Mehmed Süreyyâ, *Sicill-i Osmanı Yahud Tezkire-i Meşâhir-i Osmâniyye*, ed. Ali Aktan, Abdülkadir Yuvalı, and Mustafa Keskin (İstanbul: Sebil Yayınevi, 1995), 1:245.

13 Chief finance official. On the term *defterdâr*, see, for example, Bernard Lewis, s.v. "Daftardār," in *Encyclopaedia of Islam,* new edn.; Mübahat Kütükoğlu, s.v. "Defterdar," in *Türkiye Diyanet Vakfı İslâm Ansiklopedisi*.

14 Later, in addition to the inspection of the three provinces, that of Luristan also was charged to him. See an edict dated late Zu al-Qaʿda (July 1726) *Mühimme* 133: 280.

15 Usually, local ulamas also partook in the survey. It is not clear whether ulamas played a role in the inspection in Iran, although a few edicts on the survey were addressed to Hamadan local qadis also. For example, the order dated late Jumada al-Akhira 1138 (February–March 1726) mentioned below in the text is addressed to the Ottoman commander Ahmed Pasha and qadis of Hamadan. On the Ottoman tax assessment operations and the duties of the surveyor, see, in particular, Halil İnalcık, *Hicri 835 Tarihli Sûret-i Defter-i Sancak-ı Arvanid*, (Ankara: Türk Tarih Kurumu Basimevi, 1954), XI–XXXVI; Irène Beldiceanu-Steinherr, Nicoara Beldiceanu, "Règlement ottoman concernant le recensement (première moitié du XVI^{e} siècle)," *Sudöst Forschungen* 27 (1978), 1–40.

16 *Mühimme* 132: 165.

17 Later edicts do not refer to him as *muharrir*. He is in general regarded as a subordinate of Mustafa Fehim (ex-*defterdâr* of Basra).

18 The date of his appointment as *defterdâr* is not clear. But it must lie between his appointment as *muharrir* and the issue of this edict, that is, between October 1724 and November 1725. *Mühimme* 133: 30. The jurisdiction of Hamadan *defterdâr* seems to have corresponded to the regions liable to the survey, that is, the provinces of Hamadan, Kirmanshah, and Ardalan (later Luristan also).

19 *Mühimme* 133: 132. Another edict issued four months later also confirms the cooperation of the three officials. *Mühimme* 133: 280. The duty of *mübâşir* in this case is not described in the document. What we know is that two other *kapucubaşları*, Halil and Ibrahim, were appointed *mubâşir* for the surveys of the provinces of Tabriz

and Ganja respectively around the same time. Accordingly, it is plain that as far as the surveys of Iranian provinces are concerned, *mubaşir* is selected primarily from among *kapucubaşları* to assist the surveyor. *Mühimme* 133: 76–77. İnalcık asserts that *mübâşir* also means surveyor and is a synonym of *emîn* and *muharrir*. İnalcık, *Arvanid*, XIX. However, in the case of the Ottoman survey on Iran at the beginning of the eighteenth century, *mübâşir* was in all likelihood a different official from *muharrir*, though a *mübâşir* could be appointed *muharrir*. See also Note 21.

20 In the text, he is said to have gotten into trouble with *muharrirler*. From the context of the times, it is clear that he was in opposition to Mustafa Fehim (ex-*defterdâr* of Basra) and Karahasanzade Ahmed. *Mühimme* 133: 359.

21 This ordinance is addressed to a person who was among the scribes of the Imperial Registry and in charge of the office of *muharrir* of Hamadan. Although his name is not mentioned, doubtlessly it refers to Karahasanzade Ahmed.

22 *Mühimme* 135: 126.

23 *Mühimme* 133: 127.

24 For instance, in the *nâhiye*s of Sardrud and Atara Marj, more than 80 per cent of the registered villages were deserted.

25 Since its governor (*vâlî*), Hane Mehmed Pasha was an active collaborator of the Ottomans in their conquest of Iran, the province of Ardalan seems to have had relatively little impact of the Ottoman invasion. In fact, he played an important role in the Ottoman siege of Hamadan. Çelebizâde, *Târîh*, 179–189.

26 Nor can we deny the possibility of the evasion of surveying by taxable subjects. Note also that from the Ottoman point of view, *ʿaskerî*, that is, the ruling class, mostly townsmen, was not subject to the inspection. See below in the text.

27 However, we see the following expressions in the register: *livâ-i Hamedân*, *kazâ-i Hamadan* and *kazâ-i Tûysirkan*. Their jurisdictions are not clear.

28 Usually, *mezraʿa* means uninhabited arable land belonging to one or a few villages. But in our register, some *mezraʿa*s have inhabitants, while others have no arable land, only gardens and vineyards (*bâğ ve bâğçe*). *Mezraʿa*s are often recorded with the mention of their neighboring villages, and sometimes it is said that the inhabitants (*ahâlî*) of these villages worked the *mezraʿa*s. For a discussion of *mezraʿa* in *tahrîr* registers, see İnalcık, *Arvanid*, XXIX; Wolf Dieter Hütteroth and Kamal Abdulfattah, *Historical Geography of Palestine, Transjordan and Southern Syria in the Late 16th Century* (Erlangen: Fränkischen Geographischen Gesellschaft, 1977), 29–31; Suraiya Faroqhi, "Rural Society in Anatolia and the Balkans during the Sixteenth Century, II," *Turcica* 11 (1979): 105.

29 In the register TT907, we see another term for tribal group, *aşîret*. On the other hand, the term *cemâʿat* is also used for non-Muslim communities in urban settlements such as Christians and Jews.

30 Another category, *nefis*, is treated below. As for the provincial capital, Hamadan, it is not subordinated to any *nâhiye*. Certainly one of the *nâhiye*s is named *nâhiye-i* Hamadan, but it does not include the city of Hamadan. To be precise, the register is composed of the city of Hamadan plus *nâhiye*s.

31 Some *mezraʿa*s are listed independently, others are simply attached to the villages. The former total sixty-six, some of them composed of two or three *mezraʿa*s.

32 It seems that *hâlî ʿani'l-reʿâyâ* refers to an abandoned village where dwellings still remain, while *harâb* villages were in ruins. Users of the land neighboring uninhabited villages, probably paid or were expected to pay the taxes for this. On this subject, see, for example, Hütteroth and Abdulfattah, *Palestine*, 26.

33 In Iranian society, the term *juft* also has the same connotation and has been a principal unit for measuring the land.

34 For the classification of peasants and taxes on them, Halil İnalcık, "Osmanlılar'da Raiyyet Rüsûmu," *Belleten* 23/92 (1959): 576–610; Neşʿet Çağatay, "Osmanlı

İmparatorluğunda Reayadan Alınan Vergi ve Resimler." *Ankara Üniversitesi Dil ve Tarih-Coğrafya Fakültesi Dergisi* 5(1947): 483–511.

35 TT907 records only one village having a full *çift* holder and twenty-four villages having a few *nîm-çift*s.

36 There are exceptions. In some cases, a brother of a *bennâk* peasant is also *bennâk*.

37 Cf. İnalcık, "Raiyyet Rüsûmu," 586.

38 Not all *sayyid*s had such immunity and some are classified as taxpaying peasants.

39 The sum of these taxes is usually dependent on the number of peasants in each category. Curiously, however, in spite of the absence of *çift* peasants, *resm-i çift* is imposed on almost all villages. We will treat this interesting problem below.

40 Usually the total value is introduced with the following phrase: *hâsıl ʿani'l-gallât ve resm-i çift ve bennâk ve mücerred ve ʿâdet-i ağnâm ve bâd-ı hevâ ve rüsûmât-ı sâire*, that is, the revenue from products, hearth taxes, sheep tax, miscellaneous taxes and other taxes. TT907 has eighteen such cases altogether.

41 In this case, the following phrase is given: *hâsıl ʿani'l-gallât ve resm-i otlak ve kışlak*, that is, the revenue from products, taxes on pasture and winter quarter. Probably it means that nomads could use an abandoned village and its fields as pasture or winter quarters.

42 For the tax items registered as *mukâtaʿa*, see below. Fields and gardens in the city of Hamadan are also registered as *mukâtaʿa*, but its amount is included in the main body of the tax items list.

43 This chapter is based mainly on these works: Jacque de Morgan, *Mission scientifique en Perse* (Paris: Ernest Leroux, 1895) 2: 121–155; Guy Le Strange, *The Lands of the Eastern Caliphate. Mesopotamia, Persia, and Central Asia from the Moslem Conquest to the Time of Timur* (Cambridge: Cambridge University Press, 1905); Vladimir Minorsky, s.v. "Nihāwand," in *Encyclopaedia of Islam,* 1st edn.; Mirza Bala, s.v. "Hemedân," in *İslam Ansikilopedisi*; Richard N. Frye, s.v. "Hamadhān," in *Encyclopaedia of Islam,* new edn.

44 According to the author of *Nuzhat al-Qulūb*, a spring was also an important source. Ḥamd-Allāh Mustawfī, *The Geographical Part of the Nuzhat-al-Qulūb*, trans. Guy Le Strange (Leiden: E.J. Brill, 1919), 75.

45 Evliyâ Çelebi b. Derviş Mehemmed Zillî, *Evliyâ Çelebi Seyâhatnâmesi* (İstanbul: Yapı Kredi Yayınları, 2001), 4:209–213; Pietro Della Valle, *I viaggi di Pietro Della Valle, Lettere Dalla Persia*, ed. Franco Gaeta and Lawrence Lockhart (Roma: Istituto Poligrafico Dello Stato, 1972), 1: 18–19; Jean de Thévenot, J. *The Travels of Monsieur de Thevenot into the Levant* (London: Faithorne, 1687), 2: 71–73; Paul-Ange-L. de Gardane, *Journal d'un voyage dans la Turquie d'Asie et la Perse fait en 1807, 1808* (Paris: Le Normant, 1809), 81; John MacDonald Kinneir, *A Geographical Memoir of the Persian Empire* (London: John Murray, 1813), 124–129; James Justinian Morier, *A Second Journey through Persia, Armenia, and Asia Minor, to Constantinople, between the Years 1810 and 1816* (London: Longman, 1818), 263–272; Robert Ker Porter, *Travels in Georgia, Persia, Armenia, Ancient Babylonia, etc.: during Years 1817, 1818, 1819 and 1820* (London: Langran, 1822), 2: 85–144; James Silk Buckingham, *Travels in Assyria, Media, and Persia: Including a Journey from Bagdad by Mount Zagros, to Hamadan, the Ancient Ecbatana, Researches in Ispahan and the Ruins of Persepolis*, 2nd edn. (London: Henry Colburn and Richard Bentley, 1830), 268–302; Eugène Flandin and Pascal Coste, *Voyage en Perse de MM. Flandin et P. Coste pendant les années 1840 et 1841* (Paris: Gide et J. Baudry, 1851), 3: 15; T.M. Lycklama a Nijeholt, *Voyage en Russie, au Caucase, et en Perse, dans la Mésopotamie, le Kurdistan, la Syrie, la Palestine et la Turquie exécuté pendant les années 1865, 1866,1867 et 1868*, (Paris: Arthus Bertrand, 1872–5), 519–520; Austin Henry Layard, *Early Adventures in Persia, Susiana, and Babylonia* (London: John

Murray, 1887), 1: 252–286; Isabella Lucy Bird, *Journey in Persia and Kurdistan, Including a Summer in the Upper Karun Region and a Visit to the Nestorian Rayahs*, (London: John Murray, 1891), 1: 129–140.

46 See Vladimir Barthold, *A Historical Geography of Iran*, ed. C.E. Bosworth, tr. Svat Soucek (Princeton: Princeton University Press, 1984), 131–132.

47 Jean-Baptiste Tavernier, *Les six voyages de Turquie et de Perse, introduction et notes de Stephane Yerasimos* (Paris: F. Maspero, 1981), 1:218, 258–271; Thevenot, *Travels*, 65–77. See also John Emerson, "Ex Occidente Lux. Some European Sources on the Economic Structure of Persia between about 1630 and 1690" (Ph.D. diss, University of Cambridge, 1969), 202–204.

48 At least in the nineteenth century, there was another route from Kirmanshah to Isfahan, which passed through the middle of Tuy and Nihavand. For more details, see below.

49 This less frequently traveled route is more dangerous but also quicker and taxed less. Tavernier, *Les six voyages*, 1:258, 271.

50 The numbers presented by him are not always reliable. As for Nihavand, he points to seven caravansaries and a big market including 1,000 small shops. Evliya Çelebi, *Seyâhatnâme*, 4: 205, 209.

51 Fruits were taxed in only a few villages, but many villages seem to have produced some fruits in their gardens.

52 We should not strictly interpret the data. There would have been some other villages where these special yields are not registered but, probably in a small case, were produced.

53 The village of Sangistan-i ʿulya (42 taxpayers) in *nâhiye* of Kuhpayah is a case in point. It had, as its name shows well, no arable land, but did have a patch of garden (129 *dönüm* of *bâğ ve bâğçe*) and was also engaged in bee culture. Orcharding and apiculture seem to have been their principal means of living.

54 The rate of tax on sheep is not specified in the register. In the list of tax items of the city of Hamadan, however, 1,600 *akçe* is levied for 800 heads as the sheep tax. This means that the Ottoman administration imposed 2 *akçe* per head in the province of Hamadan. Consequently, in Isfandabad, the number of beasts per village averages out at over 500 heads.

55 See Yamaguchi, "*Ardalān*," 239. See also Mīrzā Shukrullāh Sanandajī Fakhr al-Kuttāb, *Tuḥfah-i Nāṣirī dar Tārīkh va Jughrāfiyā-yi Kurdistān* (Tehran: Amir Kabir, 1366/1987–8), 24.

56 In computing the population from the data of *tahrir defter*s, one has often multiplied the number of *hâne* in each settlement by a relevant coefficient. But we use the number of taxpayers as a criterion, because the population of Hamadan city is not classified as peasants and therefore it is not possible to know the number of *hâne* of the city. However, strictly speaking, the concept of taxpayer is not quite accurate, since we do not know when a boy came to be regarded as a man, that is, as a taxpayer. In fact, the ratio of *mücerred*, who were generally of the younger generation, is quite different from district to district. This probably means that the practice varied from place to place.

57 "Small" means villages having fewer than thirty taxpayers; "medium," thirty to seventy-nine; and "large," more than eighty. This categorization is arbitrary, but useful to clarify the size distribution of rural settlements.

58 In the province of Ardalan, the taxpaying population of the biggest village is 146 and the provincial average is 14.0, about half that of the province of Hamadan. In addition, in Ardalan, more than 90 per cent of the villages have fewer than thirty adult males. Generally speaking, rural settlements of Ardalan were smaller than those of Hamadan. See Yamaguchi, "Ardalān," 227–228.

59 There are some exceptions, though possibly most of them pertain to scribes' mistakes.
60 Cf. İnalcık's theory of "*çift-hâne* system." İnalcık, "Raiyyet Rüsûmu," 581.
61 A similar function is also observed in TT1066 for the province of Ardalan, but through this register, only Pattern 1 is found. See Yamaguchi, "Ardalān," 228–229.
62 This assessment of tax seems to be a kind of *masāḥah* method, under which the amount due was based on measurement of the land. See Ann K. S. Lambton, s.v. "Kharādj, II.-In Persia," *Encyclopaedia of Islam,* new edn.; idem, *Landlord and Peasant in Persia, A Study of Land Tenure and Land Revenue Administration* revised ed. (Oxford: Oxford University Press, 1969; London: I.B. Tauris & Co Ltd., 1991), 33. Cf. M. L. Venzke, "The Ottoman *Tahrir Defterleri* and Agricultural Productivity: The Case for Northern Syria," *Osmanlı Araştırmaları* 17 (1997): 1–61.
63 Feridun Emecen ,"Dönüm," *Türkiye Diyanet Vakfı İslâm Ansiklopedisi*, 9:521. As for the ratio of *çift* to *dönüm* in different regions, see İnalcık, Halil and Donald Quataert ed. *An Economic and Social History of the Ottoman Empire, 1300–1914* (Cambridge: Cambridge University Press, 1994), 147.
64 This investigation has yet another problem. As a matter of fact, *mezraʿa*s and arable land belonging to uninhabited villages were often worked by peasants living in neighboring inhabited villages, though in certain cases *mezraʿa*s were inhabited by a few peasants. Therefore, calculation of the extent of land worked by peasants of a given village should take into account these *mezraʿa*s and fields of deserted villages. Certainly, for some *mezraʿa*s and deserted villages, the size of fields is shown by the *çift*, and the name of the village whose peasants cultivated them is also given. But such cases are rare. More complicated is the fact that peasants of different villages could cultivate the same *mezraʿa*. Thus we are obliged to neglect these fields in our analysis, which distorts reality to some extent.
65 As for the villages for which only the total of taxed revenue is recorded without the reference to individual taxes, we calculated their *çift* numbers from the sum total.
66 The figure shows that the number of *çift*s in a village is often even, and rarely odd. This may be attributable to the method of survey, whose exact nature is unclear. In the register for the province of Ardalan, such a phenomenon is not found.
67 In reality, seasonal movement of manpower between villages must have occurred. Here we neglect this factor. See also Note 64.
68 It is strange that villages having only one taxpayer per *çift* were so numerous, given that most peasants are classified as *bennâk* or *caba*, who in principle had less than half of a *çift*. We are not in a position to explain this.
69 The difference between *şehir* and *kasaba* is not clear, but from the usage in our register, the former seems to refer to the provincial capital.
70 Therefore we see the following phrase in the register: *nefs-i şehr-i kalʿe-i Hamedân*.
71 In the register of the province of Ardalan, the term *nefis* is used for even a small rural settlement with only eighteen taxpayers. Given that this village had the same name as the *nâhiye* to which it belonged, it possibly functioned as an administrative center in some manner. Yamaguchi, "Ardalān," 257–258, Note 21.
72 Ḥamd-Allāh Mustawfi explains Harsin as being a castle. Mustawfī, *Nuzhat*, 107. The author of *Tadhkirat al-Mulūk*, edited around the same time as our register, mentions the settlement as the seat of *ḥākim*, which a contemporary chronicle, *Dastūr al-Shahriyārān* also confirms. Vladimir Minorsky, ed. and trans., *Tadhkirat al-Mulūk: A Manual of Ṣafavid Administration (circa 1137/1725), Persian Text in Facsimile (B M. Or. 9496)* (London: E. J. W. Gibb Memorial Trust, 1943), 104: Muḥammad Ibrāhīm b. Zayn al-ʿĀbidīn Naṣīrī, *Dastūr al-Shahriyārān*, ed. Muḥammad Nādir Naṣīrī Muqaddam, (Tehran: Bunyad-i mawqufat-i Duktur Mahmud Afshar, 1373/1984–5), 128. Obviously the town was the administrative center of the district of the same name.

73 The village of Chubin in the *nâhiye* of Malayir supported 410 taxpayers. See also below in the text.
74 I am grateful to Kondo Nobuaki for enlightening me in this respect.
75 Note the following phrase in the list: *mahalle-i Kina der mahalle-i Qalah*. See Table 8.8. Two hundred years later, visiting the city, Rabino reports that it was divided into four quarters: Dourdabad, Djoulahan, Mokhtaran, and Boneh Bazar. H. L. Rabino, "Hamadan," *Revue du Monde Musulman*, 43 (1921): 221.
76 Shaykh Muammad ʿAlī Ḥazīn Lāhījī, *Tārīkh va Safarnāmeh-i Ḥazīn* (Tehran: Intisharat-i Markaz-i Asnad-i Inqilab-i Islami, 1375/1996–7), 212–14.
77 Evliya Çelebi, *Seyâhatnâme*, 4: 209–210. Cf. *Tadhkirat al-Mulūk*, 104, 106. Ker Porter's description of Hamadan is also noteworthy. Visiting Hamadan in the early ninteenth century, he says, "At present it [the city] does not number more than 9,000 houses; one-third of these do not increase the revenue to the crown, 3,000 of them being inhabited by persons in the employment of the state and thus not included in the taxation of the town." Ker Porter, *Travels*, 104.
78 Leila Erder, "The Measurement of Preindustrial Population Changes: The Ottoman Empire from the 15th to the 17th Century," *Middle Eastern Studies* 11/3 (1975): 284–301.
79 Concerning Nihavand, Evliya Çelebi says that in the town (*kale*) there were about 1,000 houses (*hâne*) without gardens and vineyards. This figure is one-seventh that of Hamadan. Moreover, he adds, there were 700 soldiers (*nefer*) and 3,000 followers (*nöker*). On the other hand, the suburb also seems to have had a substantial population; according to him, the environs of the town were 9,000 steps while the surroundings of the suburb were 13,000 steps. Evliya Çelebi, *Seyâhatnâme*, 4: 205.
80 Two villages, Qara Kul (nine taxpayers) and Ganjab-i sufla (fourteen taxpayers) in the *nâhiye* of Isfandabad, seem to have been inhabited exclusively by Christians (*gebrân*). Besides, according to European travelogues of the nineteenth century, in the village of *Shivirin* neighboring Hamadan was an Armenian community, though TT907 counts only Muslims. James Morier, *Second Journey*, 263; Morgan, *Mission*, 128. On the other hand, it seems that there were no Jewish rural settlements in the province concerned.
81 However, one could not expect that the amount of *mukâtaʿa* reflects the exact scale of each economic activity, for the amount of *mukâtaʿa* seems to be merely the result of bargaining between the state and tax farmers.
82 The following notice is added: "*der hudud-ı şehir*."
83 According to the register, Hamadan paid 57,060 *akçe* for 1,902 *dönüm* of gardens and vineyards. Compare Hamadan with the village of Furujan (224 taxpayers) in the *nâhiye* of Siminrud, which had the most garden plots of any village (1,292 *dönüm*). Evliya Çelebi for his part reports that Hamadan had 46,000 garden plots, some of which were even owned by inhabitants of other towns. The gardens of Hamadan were highly appreciated for their geometrical structure and produced a variety of fruits, such as apples, apricots, plums of Buhara, pears of Keylan, grapes, pomegranates, lemons, Seville oranges, and figs. Evliya Çelebi, *Seyâhatnâme*, 4: 211. See also Thévenot, *Travels*, 72.
84 Comparison with Nihavand reveals the same result. Nihavand, which had a few more taxpaying inhabitants than Sirkan, had 6,000 *akçe* allocated to gardens. This value is about three times as much as that of Sirkan.
85 This observation is by no means new. Many scholars who study the Middle East and Central Asia refer to this fact.
86 Stockbreeding was also practiced in the towns (see Table 8.11).
87 The ratio of identification differs greatly from *nâhiye* to *nâhiye*. For the identification we used modern maps. It is possible that some settlements moved their locations

during the period from the early eighteenth century to the present day, and thus identification is never complete. Nonetheless, it will not pose a great problem for our purpose.

88 On the method of mapping of the data from *tahrîr* registers, see, in particular, Wolf Hütteroth, "The Demographic and Economic Organization of the Southern Syrian Sançaks in the Late 16th Century," in *Türkiye'nin Sosyal ve Ekonomik Tarihi (1071–1920), 'Birinci Uluslararası Türkiye'nin Sosyal ve Ekonomic Tarihi Kongresi' Tebliğleri, Hacettepe Üniversitesi, Ankara, July 11–13, 1977*, ed. Osman Okyar and Halil İnalcık (Ankara: Meteksan, 1980), 35–47; idem, "Methods of Historical Geography – Examples from Southeastern Turkey, Syria and Iraq" in *V. Milletlerarası Türkiye Sosyal ve İktisat Tarihi Kongresi, Tebliğler* (Ankara: Türk Tarih Kurumu Basımevi, 1990), 487–496.

89 We mean "within about 20km from urban settlements" by the term "around."

90 However, Evliya Çelebi affirms that 150 town-like villages surrounded Nihavand, each with a Friday mosque, a caravansary, a public bath, shops and bazaar. For instance, the village of Hazrat-i Saʿad ibn Vaqqas in the south of Nihavand accommodated a thousand houses, a Friday mosque, a caravansary, a public bath and markets. Evliya Çelebi, *Seyâhatnâme*, 5: 207. Yet according to our register, this village (*karye*) was deserted. The story of Evliya Çelebi could be rather exaggerated, for it is hard to believe that the vicinity of Nihavand should have had as many as 150 large villages equipped with a Friday mosque and other public facilities. However, at least several villages may have had these institutions. Therefore, probably more numerous larger villages were near the town, at least in the later seventeenth century, than at the time of the Ottoman survey.

91 In fact, during the reign of Fath ʿAli Shah Qajar, a new town called Dawlatabad was built in the vicinity of Chubin and other villages, and this Dawlatabad is the predecessor of actual Malayir. On the other hand, the village of Chubin was ruined around the middle of the twentieth century. ʿAlī Razmārā, ed., *Farhang-i Jughrāfiyāʾī-i Īrān* (Tehran: Vizarat-i Jang, 1331/1945–6), 5:433. See also Ker Porter, *Travels*, 85.

92 However, the itinerary from Sine to Hamadan presented by Kinneir, a nineteenth-century English traveler, does not mention Sarishabad as a station. Kinneir, *Geographical Memoir*, 423–425.

93 There are exceptions. See, for example, the above-mentioned Damaq.

94 We should add that despite each village's scanty plot of land, in some the villagers could manage to support themselves, specializing in stock farming. See Yamaguchi, "Ardalān," 239–240. However, we have no evidence to show the importance of stockbreeding in the large villages concerned. See Note 52.

95 This is noteworthy all the more as usually bread-makers were found only in towns, since bread making was traditionally domestic activity. Hélène Desmet-Grégoire and Patrice Fontaine, *La région d'Arâk et de Hamadân: cartes et documents ethnographiques* (Leuven: Peters, 1988), 23.

96 Here is an interesting example: the village of Kurdkandi in Maraghah holds no arable land, and the register (TT909) notes that the villagers were tradesmen (*tüccâr*). But no commercial tax was levied on the village. TT909, 29.

97 Thévenot, *Travels*, 71. See also Abū-Dulaf, *Abū-Dulaf Misʿar Ibn Muhalhil's Travels in Iran (circa A.D. 950)*, trans. Vladimir Minorsky (Cairo: Cairo University Press, 1955), 47; Ḥamd-Allāh Mustawfī, *Nuzhat*, 107, 161, 166; G. Le Strange, *Lands of Eastern Caliphate*, 188–189.

98 He calls Kangavar "darogalık", that is, a jurisdiction of *dārūghah* (governor). This seems to mean that Kangāvar functioned as an administrative center. Evliya Çelebi, *Seyâhatnâme*, 4: 207. On the term *dārūghah*, see Ann K. S. Lambton, s.v. "Dārūgha," *Encyclopaedia of Islam,* New edn.

99 Lycklama y Nijeholt, *Voyage*, 496. Isabella Bird also mentions "uncovered bazars" in the settlement. Bird, *Journals*, 1:133. See also Buckingham, *Travels*, 268–269; Ferrier, *Caravan Journey*, 31.

100 According to "Route from Tehraun to Hamadan, by Major Campbell" cited by Kinneir, *Geographical Memoir*, Muhajiran was a first station from Hamadan. Kinneir, *Geographical Memoir*, 463.

101 At that time, he proceeds from Dawlatabad to Kangavar, passing a route between Tuy and Nihavand. Compt. de Sercey, *Une ambassade extraordinaire: la Perse en 1839–40* (Paris: L'Artisan du Livre, 1928): 285–290. Layard also passed by Dawlatabad. Layard, *Early Adventures*, 286. See also Note 91.

102 Originally she seems to have intended to go to Tehran through Asadabad and Hamadan. But the route was blocked by snow and she took the other route to Tehran by way of Qum. Bird, *Journeys*, 133.

103 Ker Porter, Travels, 90; Buckingham, *Travels*, 298; Layard, *Early Adventures*, 278. Buckingham, leaving Hamadan, stopped at the village of Tafrijan before Yalfan. According to the register, seventy-six adult males lived in the village of Tafrijan.

104 On the development of settlements along the caravan route, Suraiya Faroqhi's works are very stimulating, though her interest is concentrated mainly on the Ottoman Anatolia during the sixteenth century. See, for instance, Leila Erder and Suraiya Faroqhi, "The Development of the Anatolian Urban Network during the Sixteenth Century," *Journal of Economic and Social History of Orient,* 23/3 (1980): 265–303.

105 The village of Hamilabad in Malayir functioned as a station for caravans at least during the nineteenth century, although in our register it was just a small village with fourteen taxpayers. According to Morier, the village of Kabutarahang was a station after Muhajiran-i Dun, which Kinneir also mentions. Kinneir, *Geographical Memoir*, 463. But according to our register it had less than five peasants at the period under examination. Moreover, Della Valle and Thévenot, who seem to have taken almost the same route between Kirmanshah and Isfahan, mention the village of Nashar, about 30-km southeast of Hamadan, as a post between Hamadan and Isfahan. Della Valle, *Il vaggio*, 1:25; Thévenot, *Travels*, 73. Yet this village is not in our register. At the time of the survey, most of villages surrounding Nashar were vacant. This seems to show that the Afghan and Ottoman invasions greatly affected this part of the province. Perhaps the village of Nashar also ceased to exist, maybe temporarily, because of those invasions.

106 See Note 90.

INDEX

ʿAbbas I, Safavid Shah, xvi, 41, 45
ʿAbbas II, Safavid Shah, 79
ʿAbbas Mirza Qajar, 37, 48
ʿAbbas, Hajji Ustad, 106–109, 113, 115–120, 122, 124
Abu Hanifa, jurist, 5, 8–10, 12, 61, 69
Abu al-Qasim, Mirza, Imam Jumʿah of Tehran, 119
Abu Yusuf, jurist, 5, 9, 10, 12
Ahmad-i Ghulam, 75, 82
Aleppo, 154
ammā baʿd, 18, 21, 22
Ardalan, 149, 151, 154, 155–156, 171, 177–179, 181–182
Ardistan, 131, 136
Armenian, 78, 80, 183
Ashraf Afghan, 75
Aubin, Jean, 100–101, 147
azān, 54, 59, 65–69
Azerbaijan, 88–89, 108, 135, 148
ʿAzud al-Dawlah, Buwayhid ruler, 134

Baghdad, 149, 154, 169, 175, 178
Basra, 149, 178
bayʿ, 15, 20, 34, 43, 49, 59, 74, 82, 117, 126
bennâk, 151, 153, 157, 169–170, 180, 182
bidʿah, 60, 66–70
Bibi Fatimah, the wife of Chaqmaq, 87–89, 91–95, 98–99, 101–102
Bukhara, 12, 53, 56, 68

caba, 151, 153, 157, 170, 182
caravansary, 26, 88–92, 95, 99, 102, 155, 174–175, 181, 184
Caucasus, 148
Central Asia, xvi, 3, 5–10, 12, 36, 44, 47, 69, 71, 104, 116, 180, 183
Chaqmaq, Amir, Shami, 87–95, 97–102, 104
çift, 151, 153, 157, 159–160, 163, 169–171, 174, 176, 180, 182

dār al-sharʿ, 22, 24
darak, 29, 48
date of the document, 13, 17, 18, 20, 22, 31–32, 35, 40, 47, 68, 98, 106, 109, 113–114, 116, 118, 123, 126
defterdâr, 149, 178, 179
dhikr, 53, 54, 56–57, 59, 60, 61, 63, 65, 66–68, 70–71
  dhikr arra, 53, 65–66, 70
  dhikr jahr, 56–57, 63, 66–68
  dhikr khafī, 68

endorsement, 17, 19, 20, 22, 32–36, 38–45, 49, 98, 107–108, 116, 119, 121–123, 127–128, *see also sijill*

faqīh, 61, 63, 67, 69–70, *see also* jurist
faskh, 29
Fatāwā Shībānī, 11
Fatāwā-yi Qāżī-khān, 65
Fath ʿAli Shah Qajar, 28, 124, 184
fatwa, xvi, 7, 53, 56, 60–61, 65, 67–71, 78, 81, 114, 117, 123, 125–126, 137
fiqh, 53, 60, 66–67, 69, 70, 137

Ghulam Husayn, Mulla, son of Ustad ʿAbbas, 107, 117–121

hadith, 9, 11, 54, 56, 59, 61, 63, 65–66, 96
Hajji Mirza Aqasi, Qajar grand vazir, 37
Hamadan, 147–151, 154–155, 157, 163–164, 166–171, 174–176, 178–185

Hamd Allah Mustawfi, 133, 180, 182
ḥammām, 83, 89–90, 92–93, 95, 99, 103, 107–109, 111, 113–115, 118–122
Hanafi School, 3–5, 7–10, 12, 44, 63
hâne, 151, 153, 157, 167, 181–182
Harsin, 155, 168–170, 175, 182
Haydar, Amir of Bukhara, 68
Herat, 60, 87, 89–90, 98, 100–104
Hidāya, 8–9, 11–12, 69
ḥukm, ahkām pl., 4, 5, 6, 7, 8, 9, 44, 46, 125, 126

Ibn al-Humam, 5, 9
Ibrahim Shahi, 54
ījāb, 22, 29, 126
ijāra, 8, 43, 89, 97
ijmāʾ, 61, 63, 65, 67
ijtihād, 6, 8, 9, 10
Ilkhanid, 14, 133
iqrār, 34, 38
Iran, xv–xvii, 13–15, 20, 32, 33, 38, 42, 44–49, 73–83, 87, 99–100, 103–106, 124–127, 131–132, 134–135, 137, 145, 147–148, 150–151, 154, 169, 176–179, 181, 184
Isfahan, 75–76, 79–80, 83, 100, 119, 126, 154, 175, 177, 181, 185
Ishaq b. Ismaʿil Ata, 66, 70
Islamic law, 14, 24, 99, 104, 113–114, 123, 133, 137

Jews, 167, 179, 183
judge, 17, 19, 22, 28, 31–36, 38–42, 104, *see also* qadi
jung, 73–76, 80–83
jurist, 5, 7–10, 12, 14, 15, 24, 33, 36, 40, 41, 42, 61, 66, 68, 113–119, 121, 123, 126–128, 134, 137, *see also faqīh*

kārīz, 130, 135, 137
Karahasanzade Ahmed, 149, 179
Kashan, 89, 131, 136, 143
khān, 93–94, *see also* caravansary
khānaqāh, 90, 92, 94, 96, 99, 102, 104
Khurasan, 89, 131, 135, 137, 154
Khuzistan, 134
Khwajagan, 56, 70
Kirman, 89, 101
Kirmanshah, 148–149, 154, 171, 178, 181, 185
Kubravi order, 63, 67–69
al-Kuhistani, 7
Kurdistan, 148, 177, 180–181

Lambton, Ann K.S., 124, 134–137
languages in/of documents, 25, 39, 41, 44, 53–54, 57, 59–61, 63, 68
  Arabic, 11, 14, 17–18, 21, 25, 27–29, 31–32, 34, 36, 41, 44, 46, 48–49, 53–54, 56–57, 60–61, 63, 65, 68–70, 127
  Persian, 11, 14, 20, 21–22, 24–25, 28–29, 31, 34, 36, 38–39, 41–42, 44, 46, 49, 53, 56–57, 59, 61, 63, 65, 68–70, 78–81, 101, 124, 126–127, 131, 145, 151, 166, 177, 180, 182
  Turkic, 53, 61, 68
Luristan, 148, 178
luzūm, 4–6, 8–10, 12

mablagh, 19, 27
madrasa, 8, 12, 57, 90, 96, 99, 102–104, 124
Mahmud Afghan, 76
majmūʿah, xvi, 73–76, 78–83
Makhdum-i Aʿzam, 67
Mangits, 68
al-Marghinani, 8
Mawarannahr, 61, 66, 70, 71, 89
mawqūfāt, 89, 95, 97, 126, *see also* waqf property
Maybud, 92–93, 95, 103
Mirza Muʿina, 76, 78–79, 83
Mirza-yi Qummi, 116, 125
mosque, 57, 65, 80, 87, 89, 102, 109, 174–175, 184
Mosul, 135, 154
mubāyaʿah, 15, 25, 28–29, 42, 43
mücerred, 151, 153, 157, 169–170, 180–181
Mughals, 75, 79
Muhammad Jaʿfar Chalmaydani, jurist of Tehran, 119
Muhammad Mahdi Kalbasi, mujtahid of Isfahan, 119
Muhammad Parsa, 61, 67
Muhammad Shah Qajar, 37
Muhaqqiq Sabzavari, 116
Mühimme Defterleri, 148, 178, 179
Mujaddidiyya, 63, 68, 71
mujtahid, 4, 5, 33, 42, 59, 61, 116, 123, 126
mukâtaʿa, 153, 167, 169, 180
muṣālaḥah, 25, 42–43, 45, 49

mushāʾ, 8, 26, 93, 103
mushrif, 95, 97–98
Mustafa Fehim, 149, 178–179
mutawalli, 5, 6, 9, 10, 95, 97–98, 104, 113, *see also* waqf-administrator

Nadir Shah Afshar, 75
nâhiye, 150–151, 153, 155, 163, 169, 174, 176, 179, 181–183
Najm al-Din Kubra, 61
Naqshbandi Order, 67, 69, 70, 71, 100
Nasir al-Din Shah Qajar, 37, 126
nāẓir, 95, 97, 98, 118
Nihavand, 154, 163–164, 167–171, 176, 178, 181, 183–185

Ottoman, Ottomans, xv–xvii, 47–48, 79, 101, 116, 123–125, 148–151, 153–155, 160, 166, 177–179, 181–185

public bath, 109, 120, 174, 184, *see also ḥammām*

qabālah, 13
qabūl, 13, 22, 29, 115, 126
qadi, 4–12, 33–34, 53, 98, 104, 116, 123, 178
Qadiri Order, 53, 63, 65, 68
Qajar, xvi–xvii, 13–15, 17, 21, 24–25, 27–29, 31–33, 38–45, 47, 106–107, 116, 122–125, 127, 128, 131, 134, 177, 184
qanāt, 26, 90, 92–93, 95, 99, 103, 132–133, 135–137, 143, 145
Qara Quyunlu, 88
Qazvin, 82, 131, 136, 154, 171, 182
Qum, 89, 102, 154, 185
Qurʾan, 9, 22, 56–57, 59–60, 63, 65–67, 91, 102–103

Rabʿ-i Rashidi, 89, 135
Ramazan ʿAli, Akhund Mulla, son-in-law of Ustad ʿAbbas, 117–122
Rashid al-Din Fazl Allah, 89, 104, 133, 135
rivāyat, 53, 56, 60–61, 70

Sadiq Tabatabaʾi, Sayyid, 121–122
Sadr al-ʿUlama, Mirza Murtaza, 121
Safavid, xvi–xvii, 15, 20–21, 31, 41, 42, 44, 45, 47–48, 73–83, 100, 124, 135, 148, 150–151, 164, 166, 177–178
Sakinah Khatun, daughter of Ustad ʿAbbas, 107, 118, 120–121
sale deed, 21, 47, 49, *see also mubāʿayah*
samaʿ, 54, 57, 60, 66–70
Samarqand, 53, 60, 70, 100, 105
Sanandaj, 171
savād, 38, 107
scripts in documents, 15, 17–19, 24, 57, 69
  dīvānī, 57
  nastaʿlīq, 17, 53, 69
  shikastah, 17
  siyāq, 19, 27, 114, 126
  thulth, 17, 18
seals in documents, 4, 7–8, 11, 17–20, 24, 28, 33–39, 41, 42, 48, 53, 54, 57, 59–61, 63, 65, 68, 70, 101, 107–108, 113–114, 116, 118, 121, 123, 126–127, 139, 141, 143
Shafiʿ School, 44, 61, 63
Shah Murad, Amir of Bukhara, 68, 71
Shahid al-Thani, jurist, 116
Shahrukh, Timurid ruler, 87–91, 99–104
Shams al-Din, Son of Chaqmaq, 88, 95, 97, 101–102, 104
shariʿa, 14, 57, 59, 60, 61, 63, 66, 67, 68, 116, 128, *see also* Islamic law
al-Shaybani, jurist, 5, 9, 10, 12
Shaybanids, 67
shaykh, 59–60, 63, 66–71, 103
shaykh al-islam, 33–34, 48
Shiʿism, 15, 33, 37, 41, 44, 113, 117, 123, 126
ṣiḥḥa, 4, 6, 9, 10, 12, 126
sijill, 4–8, 10–12, 32, 48
silsilah, 53, 63, 65, 70–71
Sirkan, 163–164, 168–170, 183
Sufi, xvi, 53, 60–61, 63, 66–69, 72, 90
ṣulḥ, 15, 42–43, 45, 48–49
Sultan Husayn, Safavid Shah, 75–76, 79–80
Sultan Muhammad, Timurid prince, 88–90, 101–102
sunna, 9, 54, 60, 65
Sunni, 44

Tabriz, 23, 34, 46, 48, 116, 124, 150, 177–178
Tahmasp I, Safavid Shah, 135
Tahmasp II, Safavid Shah, 73, 75
tahrîr defterleri, xvii,148, 149, 150, 177, 179, 184
takbīr, 53–54, 56, 59, 66–69

takyah, 107–109, 113–115, 118–120, 122
tariqa, 56, 61, 63, 65, 70
taslīm, 4, 5, 7, 10, 11
tax, 148, 150–151, 153, 155, 157, 159–160, 163–164, 166–167, 169–171, 174–176, 178–185
taʿziyah, 106–107, 113, 115, 118
Tehran, 74–75, 78, 82, 106–109, 118–119, 121–122, 124–128, 175, 185
Timurid, xvi, 87–102, 104–105
Turkey, 148
Tuy, 154, 167–171, 174, 178, 181, 185

ulama, 15, 32–36, 41–45, 61, 63, 66–68, 80, 92, 100, 114, 116, 118, 120–123, 127–128, 178
Urdubad, 76, 78, 80
Uzbekistan, 10, 11
Uzbeks, 11, 79

va baʿd, 18, 21
vaqfnāmah, 45, 53, 74, 76, 81, *see also* waqf deed
viṣāyat, 118

wāqif, 4–12
waqf, xvi, 3–12, 44, 87–104, 106–109, 111, 113–126, 128, 135
  waqf administrator, 95, 106, 113, 116–118, 120–121, *see also* mutawalli
  waqf deed, xvi, 3, 5–8, 10–12, 44, 87, 90–92, 94–95, 99–100, 106–107, 118, 121–124, 128, *see also vaqfnāmah*
  waqf property, 89, 92–95, 97–99, 104, 106, 107, 109, 113, 115, 117–122, *see also mawqūfāt*
  waqf supervisor, 118, 120, *see also nāẓir*
witnesses, 12, 20, 36, 37, 39, 40, 41, 42, 49, 98, 103

Yasavi Order, 53, 56, 60–61, 63, 66–71
Yazd, 76, 87, 88–93, 95, 97, 99–105, 125, 132, 135, 146

zamīn, 26, 105
Zands, 27, 34, 114
Zayandah Rud, 135